EXHIBITS A1-A37

EXHIBITS A1-A37

1

Exhibit A1

FEATHER FALLS CASINO

MOORETOWN RANCHERIA GAMING COMMISSION

#1 Alverda Drive, Oroville, CA 95966
Phone: (530) 533-3885 ext. 336 Fax: (530) 533-3653

November 13, 2008

Evelyn Matteucci, Chief Counsel
State of California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Comments on CGCC-8 as adopted on October 14, 2008

Dear Ms. Matteucci:

The Mooretown Rancheria ("Tribe") respectfully submits comments opposing passage of CGCC-8 following the California Gambling Control Commission's ("Commission") approval thereof on October 14, 2008. We recognize the importance of internal control standards to the integrity of tribal gaming, and work hard to make sure our gaming operation fully complies with industry standard controls. We nonetheless oppose the Commission's promulgation of CGCC-8 because it purports to usurp the Tribe's right and duty under the Compact to promulgate the regulations that control the casino operational standards addressed in the MICS. The Commission cannot dictate any standards that are not set in the Compact without approval of the Tribal-State Association ("Association"). Absent Association approval the State's regulations cannot "be effective with respect to the Tribe's Gaming Operation." Compact section 8.4.1(a). Accordingly, we propose that the Commission work cooperatively with the Association to find alternative ways of reaching its stated goals without exceeding its jurisdiction and violating the Tribe's rights under its Compact.

Our opposition to CGCC-8 is based in federal law, which provides that states can only regulate class III gaming to the extent agreed to by tribes, and in section 8.4.1(a) of our Compact which provides that State regulations affecting tribal gaming are only effective if approved by the Association. Because compliance with the particular standards found in CGCC-8 is not required under the Compact, tribes are not currently bound by those standards. If the Commission wishes to impose such compliance through regulation it must obtain Association approval. [1] When, as here, the Association disapproves a regulation, that regulation cannot be binding on the Tribe.

[1] Indeed, even section 8.4.1(d) of the Compact, which addresses the state's regulatory power under exigent circumstances, provides that regulations adopted under such circumstances become ineffective if not subsequently approved by the Association. Thus, under the Compact, the state is not entitled to unilaterally regulate tribes. Association approval is always required.

2

The Commission's stated intention to pass CGCC-8 now, without Association approval, would violate the Compact and IGRA. Accordingly, if the Commission proceeds with CGCC-8 tribes will be forced to litigate the matter in order to preclude the state from unlawfully regulating class III gaming and to establish that tribes are not subject to mandatory regulation by the Commission absent Association approval.

In its Detailed Response, as in previous letters and publications issued in connection with CGCC-8, the Commission asserts that its authority to promulgate CGCC-8 – even without Association approval – stems from sections 7.4, 7.4.4, 8.4, and 8.4.1 of the Compact. Detailed Response at 13. But the Commission completely ignores section 8.4.1(a)'s provision that no State regulation can be binding unless first approved by the Association. For reasons explained below we respectfully disagree with the Commission's assertions. Most of the sections the Commission cites do not grant the Commission any regulatory power. Instead, they authorize the State to ascertain whether the tribal gaming operation complies with tribal regulations and with the Compact.[2] And section 8.4.1, which does grant the Commission limited regulatory power, explicitly provides that any regulations promulgated pursuant thereto will only be effective if approved by the Association. *See* section 8.4.1(a). Absent such approval no binding regulation may be enacted.

Congressional intent regarding tribal gaming is very clear. The Indian Gaming Regulatory Act only permits a state to regulate tribal gaming operations *to the extent agreed by the tribe in a Tribal-State Compact.* 25 U.S.C. § 2710(d)(3)(C). The question here is whether the existing Tribal-State Compacts authorize the Commission to pass CGCC-8 *without Association approval.* They do not.

In its Detailed Response at 4, 5, 13, and 15 and in other related publications the Commission cites Compact Sections 6, 7 and 8 as sources of authority for CGCC-8. And while the Commission never even mentions the provision of section 8.4.1(a) that no State regulation "shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association," its comments imply that the regulatory authority it claims exists in the Compact may be exercised even absent the requisite Association approval. We respectfully disagree with these arguments because Sections 6, 7 and 8 do not authorize the Commission to regulate tribes absent Association approval. Here, the Association did not approve – and in fact explicitly disapproved – CGCC-8. Consequently, the State lacks authority to enact CGCC-8.

Sections 7 and 8 of the Compact, on which the Commission hangs its alleged authority, explicitly distinguish between two types of authority: Authority to *singlehandedly pass*

[2] The Commission fails to distinguish between the authority to promulgate binding regulations and the authority to ascertain whether the gaming operation complies with those regulations and with the Compact. The Compact grants the first type of authority (a) to Tribal Gaming Agencies acting alone and (b) to the State Gaming Agency upon approval of the Association. We discuss this in further detail below. But the Compact explicitly provides that the State cannot regulate tribes absent Association approval.

regulations, which the Compact generally grants to Tribal Gaming Authorities ("TGA"),[3] and authority to *ascertain Compact compliance*, which the Compact grants to both TGAs and the SGA. For example, Section 7.1 provides that "[i]t is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact..." and explicitly states that "the Tribal Gaming Agency shall adopt and enforce regulations ..." Section 8.1 provides that "[i]n order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations ..." These sections grant TGAs the first type of authority – the authority to singlehandedly pass regulations that bind the tribe. Clearly, when the parties to the Compact sought to grant authority to promulgate regulations, they stated this intent explicitly.

On the other hand, there are other provisions in Compact Sections 7 and 8 that grant a different type of authority. These provisions grant either the TGA or the SGA, or both, authority to take actions intended to assist them in ascertaining whether the gaming operations complies with the Compact. For example, Section 7.2 provides that the TGA "shall investigate any reported violation" of the Compact and "report significant or continued violations of this Compact ... to the State Gaming Agency." Section 7.4 grants the SGA the right to inspect the Casino and all records relating thereto, subject to certain conditions, in order to ascertain Compact compliance, and Section 7.4.4 grants the SGA "access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

In short, there is a clear distinction in the Compact between the authority to *promulgate* binding regulations and the authority to *ascertain* whether the gaming operation complies with those regulations and with the Compact. The TGA alone is entrusted with the first type of authority – except when the Association approves a regulation, in which case the State may also regulate – whereas the TGA and SGA are both granted the second type of authority. The State's role is thus limited in that the State may not – except by approval of the Association – pass regulations that bind the Tribe or the Casino. The State can only monitor Compact compliance and, if it perceives a violation, commence dispute-resolution procedures or seek Association approval for a regulation.

In response to the jurisdictional challenges raised in the "Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8", dated February 13, 2008, and to similar challenges raised by individual tribes, the Commission argued that authority to promulgate CGCC-8 stems from the fact that Compact Section 8.4 contemplates State regulations intended to foster statewide regulatory uniformity of Class III gaming operations. Detailed Response at 4. Because the Compact acknowledges that the State may pass such

[3] There is only one exception to the general rule that only TGAs have authority to pass binding regulations. That exception, discussed below, is found in section 8.4.1 which grants the SGA limited authority to pass such regulations. But that authority is limited by the requirement of section 8.4.1(a) that all State regulations be approved by the Association. CGCC-8 fails to meet the requirements of section 8.4.1(a) and thus the Commission lacks authority to pass it.

regulations, the argument goes, it must have implicitly granted the State unfettered authority to pass them.

We respectfully disagree. While Section 8.4 does contemplate passage of some regulations by the SGA, it also requires that any such regulations be passed in accordance with Section 8.4.1. And Section 8.4.1 states unequivocally that a regulation passed by the SGA will not "be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* ...." Thus, while the Compact does permit the State to pass regulations that foster statewide uniformity, it also provides that the State can only do so upon Association approval. Without approval of the Association, the Commission is not empowered to enact regulations that would bind the tribes. And no such approval is forthcoming here.

The Commission also cites Sections 7.4 and 7.4.4 in its Detailed Response as though they grant the State regulation-making authority without the necessity of Association approval. Detailed Response at 5, 13. But those sections do no such thing. Sections 7.4 and 7.4.4 deal with the State's authority to take actions intended to assist it in ascertaining Compact compliance. Section 7.4 provides that "the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming ... and all Gaming Operation or Facility records relating thereto." Clearly, the section does not address, let alone grant, regulation-making authority. And Section 7.4.4 provides that the "State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact." Again, the section neither addresses nor grants regulation-making authority.

The Commission implies that because it has authority to *monitor* Compact compliance it must also have authority to promulgate regulations that would secure such compliance. Detailed Response at 4, 13, 15. But the Commission provides no support for this argument, and in fact none exists. The Compact expressly addresses rulemaking. It explicitly provides that rulemaking authority may be exercised only by the TGA acting alone or by the SGA pursuant to Association approval. There is thus no basis for reading into the Compact an intent to provide independent rulemaking authority to the SGA.

The Commission further implies that the State's authority to monitor Compact compliance must entail authority to promulgate regulations that would secure such compliance because absent the latter type of authority the State's authority to monitor Compact compliance is meaningless. Detailed response at 11. But of course this objection is unfounded because the State retains a means of enforcing its interpretation of what the Compact requires. If the State believes that proper implementation of the Compact is lacking the State is authorized to initiate dispute resolution procedures. The State may also, if it wishes, try to obtain Association approval for a regulation that would require tribes to act in accordance with the State's notions of what the Compact requires. But the Compact does not permit the State to directly regulate tribal gaming operations absent Association approval.

In conclusion, the Commission's stated intent to bind tribes to requirements that are not included in Tribal-State compacts through a process that was not sanctioned in the Compact would violate both the Compact and IGRA. IGRA expressly precludes unilateral state regulation of tribal gaming and instead calls for a balance of state and tribal regulatory power achieved through a negotiated compact. The Commission may not unilaterally usurp additional power for itself. Nor may it upset the power balance negotiated by tribes and the State in the Compact. It is precisely this aspect of the Commission's current action that would force tribes to litigate against the Commission's promulgation of CGCC-8.

Sincerely,

Steve Wilson
Chairman, Mooretown Gaming Commission

Exhibit A2

Pit River Gaming Commission

Address: 20265 Tamarack Ave. Burney, California 96013
Phone: (530) 335-3962 ~ Fax: (530) 335-4734

November 14, 2008

Evelyn Matteucci, Chief Counsel
State of California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Comments on CGCC-8 as adopted on October 14, 2008

Dear Ms. Matteucci:

The Pit River Tribe ("Tribe") respectfully submits comments opposing passage of CGCC-8 following the California Gambling Control Commission's ("Commission") approval thereof on October 14, 2008. We recognize the importance of internal control standards to the integrity of tribal gaming, and work hard to make sure our gaming operation fully complies with industry standard controls. We nonetheless oppose the Commission's promulgation of CGCC-8 because it purports to usurp the Tribe's right and duty under the Compact to promulgate the regulations that control the casino operational standards addressed in the MICS. The Commission cannot dictate any standards that are not set in the Compact without approval of the Tribal-State Association ("Association"). Absent Association approval the State's regulations cannot "be effective with respect to the Tribe's Gaming Operation." Compact section 8.4.1(a). Accordingly, we propose that the Commission work cooperatively with the Association to find alternative ways of reaching its stated goals without exceeding its jurisdiction and violating the Tribe's rights under its Compact.

Our opposition to CGCC-8 is based in federal law, which provides that states can only regulate class III gaming to the extent agreed to by tribes, and in section 8.4.1(a) of our Compact which provides that State regulations affecting tribal gaming are only effective if approved by the Association. Because compliance with the particular standards found in CGCC-8 is not required under the Compact, tribes are not currently bound by those standards. If the Commission wishes to impose such compliance through regulation it must obtain Association approval. [1] When, as here, the Association disapproves a regulation, that regulation cannot be binding on the Tribe.

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We respectfully disagree. While Section 8.4 does contemplate passage of some regulations by the SGA, it also requires that any such regulations be passed in accordance with Section 8.4.1. And Section 8.4.1 states unequivocally that a regulation passed by the SGA will not "be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* ...." Thus, while the Compact does permit the State to pass regulations that foster statewide uniformity, it also provides that the State can only do so upon Association approval. Without approval of the Association, the Commission is not empowered to enact regulations that would bind the tribes. And no such approval is forthcoming here.

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In conclusion, the Commission's stated intent to bind tribes to requirements that are not included in Tribal-State compacts through a process that was not sanctioned in the Compact would violate both the Compact and IGRA. IGRA expressly precludes unilateral state regulation of tribal gaming and instead calls for a balance of state and tribal regulatory power achieved through a negotiated compact. The Commission may not unilaterally usurp additional power for itself. Nor may it upset the power balance negotiated by tribes and the State in the Compact. It is precisely this aspect of the Commission's current action that would force tribes to litigate against the Commission's promulgation of CGCC-8.

Sincerely,

David Hawkins

Chairman, Pit River Gaming Commission

Cc: Pit River Tribal Council

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EXHIBIT A5

LAW OFFICES

MARISCAL, WEEKS, MCINTYRE & FRIEDLANDER, P.A.

2901 NORTH CENTRAL AVENUE
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GLENN M. FELDMAN, ESQ.
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2008 NOV 18 P 1:21

OUR FILE NO. 10288-1

November 17, 2008

California Gambling Control Commission
Attn: Evelyn Matteucci, Chief Counsel
2399 Gateway Oaks Drive, Suite 220
Sacramento, California 95833-4231

By Federal Express

Re: Comments on CGCC-8

Dear Commissioners:

I am writing on behalf of the Cabazon Band of Mission Indians in response to Ms. Matteucci's letter of October 20, 2008.

The Cabazon Band objects to the CGCC's efforts to "re-adopt" CGCC-8 and to impose and enforce its requirements on the Band on the following grounds:

1. The CGCC's contention that it has the authority to so act under Section 8.4.1. of the Compact is in error. Section 8.4.1 (a) clearly states that the only exception to Association approval of a proposed regulation is an assertion of "exigent circumstances" under subsection (d), which is not being asserted here. Subsection (b), upon which the CGCC apparently relies for its purported authority, does not authorize the CGCC to impose and enforce a regulation against the Band after it is disapproved by the Association; Subsection (b) merely provides a procedure for the CGCC to obtain comments and continue to interact with the tribes to find common ground on a proposal to be resubmitted to the Association. (This is precisely the procedure that was followed after CGCC-7 was initially rejected by the Association, but which eventually led to its later adoption by the Association in a revised form.)[1] Significantly, subsection (b) neither says nor even suggests that it authorizes the CGCC to impose and enforce against the Band a "re-adopted" regulation that has been disapproved by the Association. Any effort by the CGCC to so act would therefore be a breach of the Compact.

[1] Thus, Section 8.4.1. (b) is not "surplusage," as suggested by the CGCC, but an important element of the process defined in Section 8.4.1 when read as a whole.

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2. The requirements of CGCC-8 exceed the State's regulatory authority under the Compact. Although the CGCC asserts that CGCC-8 is an exercise of powers already granted under the Compact, that assertion is incorrect. Although many examples could be cited, just a few will suffice for these purposes:

(a) Section 7.4 of the Compact gives the State access to "papers, books, records, equipment or places" for purposes of inspection of gaming facilities. In contrast, Section (g) of CGCC-8 adds to this list "personnel;" a category not included in the Compact and which would significantly increase the State's authority. For example, the last sentence of Section (g) purports to give the State the right to "interview and consult with" the auditors who conducted the "Agreed-Upon Procedures" audit of the gaming facility. This authority to interview outside auditors is simply not found in the Compact.

(b) On a related note, the requirement of CGCC-8 that the Band conduct an "Agreed-Upon Procedures audit" is not a requirement of the Compact.

(c) Finally, and again merely as examples, CGCC-8 would require the Band to adopt and enforce internal control standards regarding complimentary services (25 CFR § 542.17) and electronic data processing (25 CFR § 542.16). Neither of these is required under the Compact.[2]

3. CGCC-8 is unnecessary, duplicative and unduly burdensome. The Cabazon Band has recently amended its Tribal Gaming Ordinance to re-confer on the National Indian Gaming Commission the same regulatory enforcement authority over Class III MICS that the NIGC exercised prior to the CRIT decision. Although the CGCC has denigrated similar efforts by other tribes as "voluntary" and potentially unenforceable, in fact such action by the Band and the NIGC is enforceable as a matter of federal law under 25 U.S.C. § 2713 (a) (1), which authorizes the NIGC to take enforcement action for violations of "tribal ... ordinances."

The fact that the NIGC is currently enforcing MICS compliance at Cabazon makes CGCC-8 both duplicative and unduly burdensome. Even if the CGCC had such authority under the Compact (which we dispute), it makes little sense to have both the NIGC and the CGCC performing the same inspection/enforcement functions, and would double the burden on the gaming facility operator to try to accommodate the requirements of both agencies.

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[2] In fact, the only reference to complimentary services in the Compact is found at Section 10.2 (h)(1), which requires compliance with applicable state laws, if any, and not with minimum internal control standards,. This requirement of CGCC-8 therefore plainly exceeds the State's authority under the Compact.

In addition, it is possible that under CGCC-8, the Band could be required to meet two different MICS requirements. Under CGCC-8, the applicable MICS are frozen in time, as of October 1, 2007. In contrast, under the Band's amended Gaming Ordinance, the Band and the NIGC can agree to modifications of the NIGC MICS in the future, as technology and circumstances change. Given the likelihood of such changes, it is very likely that in the future, the CGCC would be enforcing one set of NIGC MICS, while the NIGC would be enforcing a different set of standards. Given the potential burden and confusion that would be created under such circumstances, neither the interests of the State, the Band nor the federal government would be furthered by such duplication of efforts.

This letter is not intended to represent all of the Cabazon Band's objections to CGCC-8 as most recently proposed. We also would incorporate by this reference the February 13, 2008 "Association Regulatory Taskforce Final Report Statement of Need; CGCC-8" as well as those tribal comments provided to the CGCC as part of the minutes of the September 4, 2008 Association meeting and at the CGCC's meeting on October 14, 2008. We would further reserve the right to advance other arguments against CGCC-8 at appropriate times and in appropriate forums as this process proceeds.

In summary, the Cabazon Band of Mission Indians objects to the CGCC's efforts to impose and enforce CGCC-8 on the Band's gaming operation and would request that the CGCC cease this effort and follow the requirements of the Compact.

Sincerely yours,

MARISCAL, WEEKS, McINTYRE
& FRIEDLANDER, P.A.

Glenn M. Feldman

GMF:mjl
Enclosure

cc: Cabazon Business Committee
Cabazon Tribal Gaming Commission

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13

LAW OFFICES

MARISCAL, WEEKS, MCINTYRE & FRIEDLANDER, P.A.

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OUR FILE NO. 10312-1

November 17, 2008

California Gambling Control Commission
Attn: Evelyn Matteucci, Chief Counsel
2399 Gateway Oaks Drive, Suite 220
Sacramento, California 95833-4231

By Federal Express

Re: Comments on CGCC-8

Dear Commissioners:

I am writing on behalf of the Santa Ynez Band of Chumash Indians in response to Ms. Matteucci's letter of October 20, 2008.

The Santa Ynez Band objects to the CGCC's efforts to "re-adopt" CGCC-8 and to impose and enforce its requirements on the Band on the following grounds:

1. The CGCC's contention that it has the authority to so act under Section 8.4.1. of the Compact is in error. Section 8.4.1 (a) clearly states that the only exception to Association approval of a proposed regulation is an assertion of "exigent circumstances" under subsection (d), which is not being asserted here. Subsection (b), upon which the CGCC apparently relies for its purported authority, does not authorize the CGCC to impose and enforce a regulation against the Band after it is disapproved by the Association; Subsection (b) merely provides a procedure for the CGCC to obtain comments and continue to interact with the tribes to find common ground on a proposal to be resubmitted to the Association. (This is precisely the procedure that was followed after CGCC-7 was initially rejected by the Association, but which eventually led to its later adoption by the Association in a revised form.)[1] Significantly, subsection (b) neither says nor even suggests that it authorizes the CGCC to impose and enforce against the Band a "re-adopted" regulation that has been disapproved by the Association. Any effort by the CGCC to so act would therefore be a breach of the Compact.

[1] Thus, Section 8.4.1. (b) is not "surplusage," as suggested by the CGCC, but an important element of the process defined in Section 8.4.1 when read as a whole.

2. The requirements of CGCC-8 exceed the State's regulatory authority under the Compact. Although the CGCC asserts that CGCC-8 is an exercise of powers already granted under the Compact, that assertion is incorrect. Although many examples could be cited, just a few will suffice for these purposes:

(a) Section 7.4 of the Compact gives the State access to "papers, books, records, equipment or places" for purposes of inspection of gaming facilities. In contrast, Section (g) of CGCC-8 adds to this list "personnel;" a category not included in the Compact and which would significantly increase the State's authority. For example, the last sentence of Section (g) purports to give the State the right to "interview and consult with" the auditors who conducted the "Agreed-Upon Procedures" audit of the gaming facility. This authority to interview outside auditors is simply not found in the Compact.

(b) On a related note, the requirement of CGCC-8 that the Tribe conduct an "Agreed-Upon Procedures audit" is not a requirement of the Compact.

(c) Finally, and again merely as examples, CGCC-8 would require the Tribe to adopt and enforce internal control standards regarding complimentary services (25 CFR § 542.17) and electronic data processing (25 CFR § 542.16). Neither of these is required under the Compact.[2]

3. CGCC-8 is unnecessary, duplicative and unduly burdensome. The Santa Ynez Band has recently amended its Tribal Gaming Ordinance to re-confer on the National Indian Gaming Commission the same regulatory enforcement authority over Class III MICS that the NIGC exercised prior to the CRIT decision. Although the CGCC has denigrated similar efforts by other tribes as "voluntary" and potentially unenforceable, in fact such action by the Tribe and the NIGC is enforceable as a matter of federal law under 25 U.S.C. § 2713 (a) (1), which authorizes the NIGC to take enforcement action for violations of "tribal ... ordinances."

The fact that the NIGC is currently enforcing MICS compliance at Santa Ynez makes CGCC-8 both duplicative and unduly burdensome. Even if the CGCC had such authority under the Compact (which we dispute), it makes little sense to have both the NIGC and the CGCC performing the same inspection/enforcement functions, and would double the burden on the gaming facility operator to try to accommodate the requirements of both agencies.

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[2] In fact, the only reference to complimentary services in the Compact is found at Section 10.2 (h)(1), which requires compliance with applicable state laws, if any, and not with minimum internal control standards,. This requirement of CGCC-8 therefore plainly exceeds the State's authority under the Compact.

In addition, it is possible that under CGCC-8, the Tribe could be required to meet two different MICS requirements. Under CGCC-8, the applicable MICS are frozen in time, as of October 1, 2007. In contrast, under the Tribe's amended Gaming Ordinance, the Tribe and the NIGC can agree to modifications of the NIGC MICS in the future, as technology and circumstances change. Given the likelihood of such changes, it is very likely that in the future, the CGCC would be enforcing one set of NIGC MICS, while the NIGC would be enforcing a different set of standards. Given the potential burden and confusion that would be created under such circumstances, neither the interests of the State, the Tribe nor the federal government would be furthered by such duplication of efforts.

This letter is not intended to represent all of the Santa Ynez Band's objections to CGCC-8 as most recently proposed. We also would incorporate by this reference the February 13, 2008 "Association Regulatory Taskforce Final Report Statement of Need, CGCC-8" as well as those tribal comments provided to the CGCC as part of the minutes of the September 4, 2008 Association meeting and at the CGCC's meeting on October 14, 2008. We would further reserve the right to advance other arguments against CGCC-8 at appropriate times and in appropriate forums as this process proceeds.

In summary, the Santa Ynez Band of Chumash Indians objects to the CGCC's efforts to impose and enforce CGCC-8 on the Band's gaming operation and would request that the CGCC cease this effort and follow the requirements of the Compact.

Sincerely yours,

MARISCAL, WEEKS, McINTYRE
& FRIEDLANDER, P.A.

Glenn M. Feldman

GMF:mjl
Enclosure
cc: Santa Ynez Business Committee
Santa Ynez Tribal Gaming Agency

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OUR FILE NO. 10288-1

November 17, 2008

California Gambling Control Commission
Attn: Evelyn Matteucci, Chief Counsel
2399 Gateway Oaks Drive, Suite 220
Sacramento, California 95833-4231

By Federal Express

Re: Comments on CGCC-8

Dear Commissioners:

I am writing on behalf of the San Pasqual Band of Mission Indians in response to Ms. Matteucci's letter of October 20, 2008.

The San Pasqual Band objects to the CGCC's efforts to "re-adopt" CGCC-8 and to impose and enforce its requirements on the Band on the following grounds:

1. The CGCC's contention that it has the authority to so act under Section 8.4.1. of the Compact is in error. Section 8.4.1 (a) clearly states that the only exception to Association approval of a proposed regulation is an assertion of "exigent circumstances" under subsection (d), which is not being asserted here. Subsection (b), upon which the CGCC apparently relies for its purported authority, does not authorize the CGCC to impose and enforce a regulation against the Band after it is disapproved by the Association; Subsection (b) merely provides a procedure for the CGCC to obtain comments and continue to interact with the tribes to find common ground on a proposal to be resubmitted to the Association. (This is precisely the procedure that was followed after CGCC-7 was initially rejected by the Association, but which eventually led to its later adoption by the Association in a revised form.)[1] Significantly, subsection (b) neither says nor even suggests that it authorizes the CGCC to impose and enforce against the Band a "re-adopted" regulation that has been disapproved by the Association. Any effort by the CGCC to so act would therefore be a breach of the Compact.

[1] Thus, Section 8.4.1. (b) is not "surplusage," as suggested by the CGCC, but an important element of the process defined in Section 8.4.1 when read as a whole.

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2. The requirements of CGCC-8 exceed the State's regulatory authority under the Compact. Although the CGCC asserts that CGCC-8 is an exercise of powers already granted under the Compact, that assertion is incorrect. Although many examples could be cited, just a few will suffice for these purposes:

(a) Section 7.4 of the Compact gives the State access to "papers, books, records, equipment or places" for purposes of inspection of gaming facilities. In contrast, Section (g) of CGCC-8 adds to this list "personnel;" a category not included in the Compact and which would significantly increase the State's authority. For example, the last sentence of Section (g) purports to give the State the right to "interview and consult with" the auditors who conducted the "Agreed-Upon Procedures" audit of the gaming facility. This authority to interview outside auditors is simply not found in the Compact.

(b) On a related note, the requirement of CGCC-8 that the Band conduct an "Agreed-Upon Procedures audit" is not a requirement of the Compact.

(c) Finally, and again merely as examples, CGCC-8 would require the Band to adopt and enforce internal control standards regarding complimentary services (25 CFR § 542.17) and electronic data processing (25 CFR § 542.16). Neither of these is required under the Compact.[2]

3. CGCC-8 is unnecessary, duplicative and unduly burdensome. The San Pasqual Band is in the process of amending its Tribal Gaming Ordinance to re-confer on the National Indian Gaming Commission the same regulatory enforcement authority over Class III MICS that the NIGC exercised prior to the CRIT decision. Although the CGCC has denigrated similar efforts by other tribes as "voluntary" and potentially unenforceable, in fact such action by the Band and the NIGC is enforceable as a matter of federal law under 25 U.S.C. § 2713 (a) (1), which authorizes the NIGC to take enforcement action for violations of "tribal ... ordinances."

The fact that after the Band's ordinance is amended, the NIGC will be enforcing MICS compliance at San Pasqual makes CGCC-8 both duplicative and unduly burdensome. Even if the CGCC had such authority under the Compact (which we dispute), it makes little sense to have both the NIGC and the CGCC performing the same inspection/enforcement functions, and would double the burden on the gaming facility operator to try to accommodate the requirements of both agencies.

---

[2] In fact, the only reference to complimentary services in the Compact is found at Section 10.2 (h)(1), which requires compliance with applicable state laws, if any, and not with minimum internal control standards,. This requirement of CGCC-8 therefore plainly exceeds the State's authority under the Compact.

In addition, it is possible that under CGCC-8, the Band could be required to meet two different MICS requirements. Under CGCC-8, the applicable MICS are frozen in time, as of October 1, 2007. In contrast, under the Band's amended Gaming Ordinance, the Band and the NIGC will be able to agree to modifications of the NIGC MICS in the future, as technology and circumstances change. Given the likelihood of such changes, it is very likely that in the future, the CGCC would be enforcing one set of NIGC MICS, while the NIGC would be enforcing a different set of standards. Given the potential burden and confusion that would be created under such circumstances, neither the interests of the State, the Band nor the federal government would be furthered by such duplication of efforts.

This letter is not intended to represent all of the San Pasqual Band's objections to CGCC-8 as most recently proposed. We also would incorporate by this reference the February 13, 2008 "Association Regulatory Taskforce Final Report Statement of Need, CGCC-8" as well as those tribal comments provided to the CGCC as part of the minutes of the September 4, 2008 Association meeting and at the CGCC's meeting on October 14, 2008. We would further reserve the right to advance other arguments against CGCC-8 at appropriate times and in appropriate forums as this process proceeds.

In summary, the San Pasqual Band of Mission Indians objects to the CGCC's efforts to impose and enforce CGCC-8 on the Band's gaming operation and would request that the CGCC cease this effort and follow the requirements of the Compact.

Sincerely yours,

MARISCAL, WEEKS, McINTYRE
& FRIEDLANDER, P.A.

Glenn M. Feldman

GMF:mjl
Enclosure

cc: San Pasqual Business Committee
San Pasqual Tribal Gaming Commission

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Exhibit A4

Mooretown Rancheria
#1 Alverda Drive
Oroville, CA 95966
(530) 533-3625 Office
(530) 533-3680 Fax

2008 NOV 20 A11:28

November 18, 2008

Evelyn Matteucci, Chief Counsel
State of California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Comments on CGCC-8 as adopted on October 14, 2008

Dear Ms. Matteucci:

The Mooretown Rancheria ("Tribe") respectfully submits comments opposing passage of CGCC-8 following the California Gambling Control Commission's ("Commission") approval thereof on October 14, 2008. We recognize the importance of internal control standards to the integrity of tribal gaming, and work hard to make sure our gaming operation fully complies with industry standard controls. We nonetheless oppose the Commission's promulgation of CGCC-8 because it purports to usurp the Tribe's right and duty under the Compact to promulgate the regulations that control the casino operational standards addressed in the MICS. The Commission cannot dictate any standards that are not set in the Compact without approval of the Tribal-State Association ("Association"). Absent Association approval the State's regulations cannot "be effective with respect to the Tribe's Gaming Operation." Compact section 8.4.1(a). Accordingly, we propose that the Commission work cooperatively with the Association to find alternative ways of reaching its stated goals without exceeding its jurisdiction and violating the Tribe's rights under its Compact.

Our opposition to CGCC-8 is based in federal law, which provides that states can only regulate class III gaming to the extent agreed to by tribes, and in section 8.4.1(a) of our Compact which provides that State regulations affecting tribal gaming are only effective if approved by the Association. Because compliance with the particular standards found in CGCC-8 is not required under the Compact, tribes are not currently bound by those standards. If the Commission wishes to impose such compliance through regulation it must obtain Association approval. [1] When, as here, the Association disapproves a regulation, that regulation cannot be binding on the Tribe.

[1] Indeed, even section 8.4.1(d) of the Compact, which addresses the state's regulatory power under exigent circumstances, provides that regulations adopted under such circumstances become ineffective if not subsequently approved by the Association. Thus, under the Compact, the state is not entitled to unilaterally regulate tribes. Association approval is always required.

The Commission's stated intention to pass CGCC-8 now, without Association approval, would violate the Compact and IGRA. Accordingly, if the Commission proceeds with CGCC-8 tribes will be forced to litigate the matter in order to preclude the state from unlawfully regulating class III gaming and to establish that tribes are not subject to mandatory regulation by the Commission absent Association approval.

In its Detailed Response, as in previous letters and publications issued in connection with CGCC-8, the Commission asserts that its authority to promulgate CGCC-8 – even without Association approval – stems from sections 7.4, 7.4.4, 8.4, and 8.4.1 of the Compact. Detailed Response at 13. But the Commission completely ignores section 8.4.1(a)'s provision that no State regulation can be binding unless first approved by the Association. For reasons explained below we respectfully disagree with the Commission's assertions. Most of the sections the Commission cites do not grant the Commission any regulatory power. Instead, they authorize the State to ascertain whether the tribal gaming operation complies with tribal regulations and with the Compact.[2] And section 8.4.1, which does grant the Commission limited regulatory power, explicitly provides that any regulations promulgated pursuant thereto will only be effective if approved by the Association. *See* section 8.4.1(a). Absent such approval no binding regulation may be enacted.

Congressional intent regarding tribal gaming is very clear. The Indian Gaming Regulatory Act only permits a state to regulate tribal gaming operations *to the extent agreed by the tribe in a Tribal-State Compact.* 25 U.S.C. § 2710(d)(3)(C). The question here is whether the existing Tribal-State Compacts authorize the Commission to pass CGCC-8 *without Association approval.* They do not.

In its Detailed Response at 4, 5, 13, and 15 and in other related publications the Commission cites Compact Sections 6, 7 and 8 as sources of authority for CGCC-8. And while the Commission never even mentions the provision of section 8.4.1(a) that no State regulation "shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association," its comments imply that the regulatory authority it claims exists in the Compact may be exercised even absent the requisite Association approval. We respectfully disagree with these arguments because Sections 6, 7 and 8 do not authorize the Commission to regulate tribes absent Association approval. Here, the Association did not approve – and in fact explicitly disapproved – CGCC-8. Consequently, the State lacks authority to enact CGCC-8.

Sections 7 and 8 of the Compact, on which the Commission hangs its alleged authority, explicitly distinguish between two types of authority: Authority to *singlehandedly pass*

[2] The Commission fails to distinguish between the authority to promulgate binding regulations and the authority to ascertain whether the gaming operation complies with those regulations and with the Compact. The Compact grants the first type of authority (a) to Tribal Gaming Agencies acting alone and (b) to the State Gaming Agency upon approval of the Association. We discuss this in further detail below. But the Compact explicitly provides that the State cannot regulate tribes absent Association approval.

regulations, which the Compact generally grants to Tribal Gaming Authorities ("TGA"),[3] and authority to *ascertain Compact compliance*, which the Compact grants to both TGAs and the SGA. For example, Section 7.1 provides that "[i]t is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact..." and explicitly states that "the Tribal Gaming Agency shall adopt and enforce regulations ..." Section 8.1 provides that "[i]n order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations ..." These sections grant TGAs the first type of authority – the authority to singlehandedly pass regulations that bind the tribe. Clearly, when the parties to the Compact sought to grant authority to promulgate regulations, they stated this intent explicitly.

On the other hand, there are other provisions in Compact Sections 7 and 8 that grant a different type of authority. These provisions grant either the TGA or the SGA, or both, authority to take actions intended to assist them in ascertaining whether the gaming operations complies with the Compact. For example, Section 7.2 provides that the TGA "shall investigate any reported violation" of the Compact and "report significant or continued violations of this Compact ... to the State Gaming Agency." Section 7.4 grants the SGA the right to inspect the Casino and all records relating thereto, subject to certain conditions, in order to ascertain Compact compliance, and Section 7.4.4 grants the SGA "access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

In short, there is a clear distinction in the Compact between the authority to *promulgate* binding regulations and the authority to *ascertain* whether the gaming operation complies with those regulations and with the Compact. The TGA alone is entrusted with the first type of authority – except when the Association approves a regulation, in which case the State may also regulate – whereas the TGA and SGA are both granted the second type of authority. The State's role is thus limited in that the State may not – except by approval of the Association – pass regulations that bind the Tribe or the Casino. The State can only monitor Compact compliance and, if it perceives a violation, commence dispute-resolution procedures or seek Association approval for a regulation.

In response to the jurisdictional challenges raised in the "Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8", dated February 13, 2008, and to similar challenges raised by individual tribes, the Commission argued that authority to promulgate CGCC-8 stems from the fact that Compact Section 8.4 contemplates State regulations intended to foster statewide regulatory uniformity of Class III gaming operations. Detailed Response at 4. Because the Compact acknowledges that the State may pass such

[3] There is only one exception to the general rule that only TGAs have authority to pass binding regulations. That exception, discussed below, is found in section 8.4.1 which grants the SGA limited authority to pass such regulations. But that authority is limited by the requirement of section 8.4.1(a) that all State regulations be approved by the Association. CGCC-8 fails to meet the requirements of section 8.4.1(a) and thus the Commission lacks authority to pass it.

regulations, the argument goes, it must have implicitly granted the State unfettered authority to pass them.

We respectfully disagree. While Section 8.4 does contemplate passage of some regulations by the SGA, it also requires that any such regulations be passed in accordance with Section 8.4.1. And Section 8.4.1 states unequivocally that a regulation passed by the SGA will not "be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* ...." Thus, while the Compact does permit the State to pass regulations that foster statewide uniformity, it also provides that the State can only do so upon Association approval. Without approval of the Association, the Commission is not empowered to enact regulations that would bind the tribes. And no such approval is forthcoming here.

The Commission also cites Sections 7.4 and 7.4.4 in its Detailed Response as though they grant the State regulation-making authority without the necessity of Association approval. Detailed Response at 5, 13. But those sections do no such thing. Sections 7.4 and 7.4.4 deal with the State's authority to take actions intended to assist it in ascertaining Compact compliance. Section 7.4 provides that "the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming ... and all Gaming Operation or Facility records relating thereto." Clearly, the section does not address, let alone grant, regulation-making authority. And Section 7.4.4 provides that the "State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact." Again, the section neither addresses nor grants regulation-making authority.

The Commission implies that because it has authority to *monitor* Compact compliance it must also have authority to promulgate regulations that would secure such compliance. Detailed Response at 4, 13, 15. But the Commission provides no support for this argument, and in fact none exists. The Compact expressly addresses rulemaking. It explicitly provides that rulemaking authority may be exercised only by the TGA acting alone or by the SGA pursuant to Association approval. There is thus no basis for reading into the Compact an intent to provide independent rulemaking authority to the SGA.

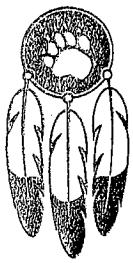
The Commission further implies that the State's authority to monitor Compact compliance must entail authority to promulgate regulations that would secure such compliance because absent the latter type of authority the State's authority to monitor Compact compliance is meaningless. Detailed response at 11. But of course this objection is unfounded because the State retains a means of enforcing its interpretation of what the Compact requires. If the State believes that proper implementation of the Compact is lacking the State is authorized to initiate dispute resolution procedures. The State may also, if it wishes, try to obtain Association approval for a regulation that would require tribes to act in accordance with the State's notions of what the Compact requires. But the Compact does not permit the State to directly regulate tribal gaming operations absent Association approval.

In conclusion, the Commission's stated intent to bind tribes to requirements that are not included in Tribal-State compacts through a process that was not sanctioned in the Compact would violate both the Compact and IGRA. IGRA expressly precludes unilateral state regulation of tribal gaming and instead calls for a balance of state and tribal regulatory power achieved through a negotiated compact. The Commission may not unilaterally usurp additional power for itself. Nor may it upset the power balance negotiated by tribes and the State in the Compact. It is precisely this aspect of the Commission's current action that would force tribes to litigate against the Commission's promulgation of CGCC-8.

Sincerely,

Melvin Jackson
Vice Chairman
Mooretown Rancheria

Exhibit A5



Rumsey Indian Rancheria

YOCHA-DE-HE

Rumsey Band of Wintun Indians

TRIBAL COUNCIL

Marshall McKay
Chairman

Bessey Villalobos
Secretary

Anthony Roberts
Treasurer

Twila Frease
Council Member

Cynthia Clarke
Council Member

November 18, 2008

VIA FACSIMILE AND FEDERAL EXPRESS

Evelyn M. Matteucci, Esq.
Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, California 95833

Re: Rumsey Indian Rancheria Comments To CGCC-8

Dear Ms. Matteucci:

As the Chairman of the Rumsey Band of Wintun Indians (the "Tribe"), I write on the Tribe's behalf in response to the California Gambling Control Commission's October 20, 2008 letter submitting proposed regulation CGCC-8 to the Tribe for comment. Before setting out the Tribe's substantive comments to CGCC-8, we want to express our procedural objections to the CGCC's adoption of the regulation.

A. PROCEDURAL OBJECTIONS

The facts of this matter are stark. At the September 4, 2008 Tribal-State Association (the "Association") meeting, every single tribe in attendance, as well as the Department of Justice's Bureau of Gambling Control (which is one half of the State Gaming Agency ("SGA")) voted against the adoption of CGCC-8. The CGCC accounted for the *single* vote in favor of the regulation. Despite the fact that even the SGA could not agree on the adoption of the proposed regulation, the CGCC is now trying to unilaterally impose it on every gaming tribe with a compact. What the CGCC seeks to do not only violates common sense, it is inconsistent with the compact's terms and contrary to applicable law.

1. The Compact's Terms Prohibit The Unilateral Imposition Of CGCC-8

The compact between the Tribe and the State contemplates checks on the SGA's efforts to impose regulations on the Tribe. One check comes in the form of Section 8.4.1(a), which provides:

> Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.

This language unambiguously imposes two requirements before a regulation may become "effective with respect to the Tribe's Gaming Operation": (1) the Association must first approve the regulation and (2) the Tribe must have the opportunity to review and comment on the proposed regulation. The *sole* exception to Section 8.4.1(a)'s absolute language is in the case of exigent circumstances, as provided in Section 8.4.1(d).

Despite this unequivocal language, the CGCC asserts in its Detailed Response To Tribal-State Association Objections (the "Detailed Response") that Section 8.4.1(b) "provides a clear exception" to the Section 8.4.1(a) requirement of Association approval. Section 8.4.1(b)'s language belies this assertion:

> Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

Nothing in Section 8.4.1(b) even hints at (much less provides a "clear" indication of) an intent by the parties to eliminate the requirement that the Association approve any SGA regulation before it becomes effective. Rather, Section 8.4.1(b) merely imposes two additional procedural requirements

bearing on the regulation process, both of which are consistent with the requirement of Association approval.[1]

Section 8.4.1(c) imposes another procedural step that is necessary prior to the implementation of a regulation, but which does not permit implementation where the Section 8.4.1(a) prerequisite has not been met:

> Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation in respect to the Tribe's Gaming Operation before the expiration of 30 days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.

Nowhere does Section 8.4.1(c) provide that a proposed regulation actually becomes effective 30 days after submission to the Tribe, much less that it could become effective notwithstanding a lack of Association approval, which Section 8.4.1(a) explicitly requires.

Accordingly, the language of Sections 8.4.1(b) and (c) does not purport to create exceptions to the requirement of Association approval, and rather functions solely to impose additional prerequisites before an SGA regulation can take effect. Further proof of this point is that, as noted above, Section 8.4.1(a) contains specific exception language with respect to subsection (d) ("[e]xcept as provided in subdivision (d) . . ."), demonstrating that the parties knew how to carve out exceptions with respect to the Association approval requirement. They obviously chose not to do so as to Sections 8.4.1(b) or (c).

The CGCC asserts, without explanation, that the Tribe's reading renders Section 8.4.1(b) surplusage. Contrary to the CGCC's contentions, Section 8.4.1(b) serves important functions in the procedural scheme without reading the Association-approval requirement out of the compact. *See Boghos*

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[1] For example, Section 8.4.1(b)'s second sentence spares the Tribe from the effort and expense of commenting, pursuant to Section 8.4.1(c), on a regulation that the SGA could later amend in response to the Association's disapproval. Without it, the regulation could be submitted to the Tribe immediately following the Association's disapproval, requiring the Tribe to provide its comments within 30 days thereafter, even though the SGA might opt to amend the regulation in order to win Association approval.

v. Certain Underwriters at Lloyd's of London, 36 Cal. 4th 495, 503 (2005) (construction of a contract did not render one provision surplusage where, given some set of facts, the provision "continues to have real effect"). The CGCC's mere desire that Section 8.4.1(b) do more than its language supports – that is, that it anoint the CGCC with unilateral regulatory power over Indian country – does not justify ignoring subsection (a)'s plain language.

2. <u>Applicable Law Prohibits The Unilateral Imposition Of CGCC-8</u>

As explained above, Section 8.4.1(a) unmistakably makes Association approval a prerequisite for an SGA regulation to be effective as to the Tribe. However, even if Section 8.4.1 could be read as a whole to be ambiguous, any ambiguity would have to be construed against state regulatory jurisdiction. As the California Supreme Court has recognized, "a state may not impose general civil/regulatory laws on the reservation." *People Ex. Rel. Department of Transportation v. Naegele*, 38 Cal. 3d 509, 521 (1985) (citing *Barona Group of Captain Grande Band v. Puffy*, 694 F.2d 1185 (9th Cir. 1982)); *see Bryan v. Itasca County*, 426 U.S. 373, 376 (1976). State laws purporting to regulate tribal gaming are no exception. *Barona Group*, 694 F.2d at 1190 (absent tribal consent, state lacked authority to regulate bingo games operated by Indian tribes on Indian land); *see* 25 U.S.C. § 2701(5) ("Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."). As such, the Section 8.4.1(a) limitation must be "strictly construed" in the Tribe's favor. *Lawrence v. Barona Valley Ranch & Resort*, 153 Cal. App. 4th 1364, 1369 (2007); *C&L Enterprises v. Citizens Band of Potawatomi*, 532 U.S. 411, 418 (2001).

More important, the CGCC's reading of Section 8.4.1 permits the CGCC to disregard the will of each and every tribe and to unilaterally implement regulations specifying details about how each tribe regulates its gaming operation. The CGCC's reading also gives it the power to disregard objections not only from the tribal regulators who are part of the Association, but also from the other State agency with a role in the regulatory process, the Bureau of Gambling Control. In other words, the CGCC claims it can implement a regulation binding on tribal governments even if the Department of Justice and gaming regulators from every single gaming tribe oppose it. If this proposition were true, it would mean the CGCC, alone, has the unilateral

right to impose *any regulation it wants, almost without regard to subject or substance*, on California tribes. To state the proposition is to refute it.

Permitting the State to implement regulations without any effective procedural check in favor of the tribes substitutes unilateral State regulation for the government-to-government arrangement contemplated by the compact. It strains credibility to suggest that the tribes would have agreed to the compact knowing that the State, otherwise lacking any regulatory jurisdiction over tribes and tribal government, would have unchecked authority to unilaterally implement regulations governing tribal gaming. Instead, the compact contemplated tribal regulation of its gaming operation, along with the potential for the implementation of certain SGA regulations that could gain support of a body comprised of gaming regulators from the tribes, the Bureau of Gambling Control, and the CGCC. Common sense, the plain language of Section 8.4.1, and applicable law mandate such a reading.

B. SUBSTANTIVE OBJECTIONS TO CGCC-8

The Tribe believes the February 13, 2008 Final Report from the Association's Regulatory Standards Task Force, along with the subsequent comments by various tribes, comprehensively and cogently set out the compelling arguments against CGCC-8. The Tribe also believes the CGCC's Detailed Response and the supplement to that Response do nothing more than provide empty arguments in favor of forcing CGCC-8 on compact tribes, and demonstrate the CGCC's consistently high-handed, disrespectful approach to its relations with those tribes.

In addition to its prior comments, the Tribe also raises the following specific objections to CGCC-8, and requests that the CGCC address these objections.

1. CGCC-8 Is An Attempt To Amend The Compact Through Regulation

According to the Detailed Response (at pages 3, 4), the CGCC finds in Section 8.4 of the compact broad authority to impose regulations on any subject covered by Sections 6, 7 and 8 of the compact. As the Detailed Response puts it, Section 8.4 provides "in substance":

> That the parties agree that the SGA, for the purpose of fostering "statewide uniformity of regulation of Class III gaming operations

> throughout the state," has the power to adopt regulations on "any matter encompassed by Section 6.0, 7.0. [sic] and 8.0". [(Detailed Response, p. 4 (emphasis in original)].

In reality, Section 8.4 provides no such "power" to the CGCC, either in letter or "substance." To the contrary, Section 8.4 stands for the simple proposition that any "rules, regulations, standards, specifications, and procedures" *of the Tribal Gaming Agency* ("TGA") addressing the matters encompassed in Sections 6, 7 and 8 of the compact, must be "consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1." Here, the SGA has adopted no regulations "in accordance with Section 8.4.1" that in any way address Sections 6, 7 or 8 of the compact.

Setting aside the CGCC's improper arrogation of power to itself, nothing in Sections 6, 7 or 8 of the compact even hint at CGCC-8's most egregious provisions. For example, on the most basic level, Sections 6, 7 or 8 of the compact nowhere mention the federal Minimum Internal Control Standards ("MICS") CGCC-8 seeks to impose on California tribes.

As another example, the Tribe challenges the CGCC to locate any mention – much less a requirement – in compact sections 6, 7 or 8 for the Tribe to perform an "Agreed-Upon Procedures" audit and to forward the results of that audit to the CGCC. That provision does not exist in the compact. It can, however, be found at section (f) of CGCC-8. Not content with that unwarranted expansion of the compact, in section (g) of the proposed regulation, the CGCC expands the access to documents it currently has under section 7.4 of the compact to include such things as the right to "interview and consult" the independent certified public accountant performing the "Agreed-Upon Procedures."[2] Where, exactly, in the compact does the CGCC find authority for *that* expansion?

The same is true with respect to financial audits. Section 8.1.8 of the Tribe's compact requires the TGA to ensure that an independent certified public accountant annually audit the Tribe's gaming operation. To meet this compact obligation, Rumsey's TGA has annually provided to the State documentation demonstrating that the audit section 8.1.8 requires was performed. That is all the compact requires. Nothing in the compact provides the CGCC – or any other State agency, for that matter – the right to *receive*

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[2] CGCC-8 also expands the SGA's current access to *documents* under Section 7.4 to include access to "*personnel.*" (CGCC-8, Section (g).)

actual copies of the audits, which, after all, contain the Tribe's most sensitive financial information. Yet that is exactly what CGCC-8 requires.

This is a critical point. Under compact section 7.4.4, the State is entitled to inspect the gaming operation's records, but only *"as reasonably necessary to ensure compliance with the Compact."* Receiving *actual copies* of the gaming operation's financial audits is *not* required to meet that standard. Moreover, it is important to note that nothing in the regulatory landscape (including the *Colorado River Indian Tribes v. NIGC* ("*CRIT*") decision) altered the tribes' obligation to submit to the National Indian Gaming Commission copies of their full financial audits. Thus, at least at least in this respect, CGCC-8 clearly is duplicative.

In addition, in its Detailed Response (at page 5), the CGCC claims CGCC-8 is not an "expansion" of the CGCC's authority, but, rather, an "exercise" of authority that has existed "all along." If that is true, and CGCC-8 is not an amendment to the 1999 compacts, perhaps the CGCC can explain why new compacts the State has entered into with, among others, the North Fork Rancheria, have provisions that mirror those in CGCC-8. Along the same lines, the compact amendments the State signed with several Southern California tribes in 2006 included Memoranda of Agreement ("MOA") that imposed on the tribes at issue the obligation to maintain and implement MICS, just as CGCC-8 attempts to do. If the CGCC truly always had, as it claims, the power under pre-2006 compacts to do all that CGCC-8 provides, it would not have had to include the MOA in the 2006 compacts.[3]

2. The SGA Already Verifies Compact Compliance

The Detailed Response asserts (at page 18) that "[t]he SGA focus is Compact compliance," and spends many pages arguing how CGCC-8 will assist the SGA to ensure tribes comply with their compact obligations. However, the CGCC's premise – that there is a lack of state oversight of Indian casinos – is simply false.

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[3] The Detailed Response attempts, unconvincingly, to address this last point. According to the Detailed Response (at page 14), the MOA were an "interim measure" to keep the NIGC MICS in place until CGCC-8 came on-line. This non-sense ignores the MOA's own language that their provisions were "intended to supplement" – that is, add to – the respective tribes' compact obligations. The Rumsey Tribe does not wish to have the CGCC "supplement" its compact.

The SGA not only has the authority to conduct compliance reviews as to Sections 6, 7, and 8 of the Tribe's compact with the State, they have exercised that authority numerous times at the Tribe's gaming facility, Cache Creek Casino Resort. Indeed, since the compact went into effect, the Bureau of Gambling Control's agents and analysts have performed compact compliance reviews at Cache Creek nearly a dozen times, the last being October 15, 2008. In connection with these compliance reviews, the Rumsey TGA has on many occasions provided to the Bureau of Gambling Control, and even the CGCC, copies of Cache Creek's System of Internal Controls ("SIC"). The SIC is a document that explains, in great detail, how Cache Creek complies with each and every regulation contained in the Rumsey Tribal MICS. The Tribal MICS, in turn, exceed the requirements of the NIGC's MICS. So, the question here is this: If the SGA already is empowered under the compact to ensure Cache Creek's compliance with the SIC as it relates to the many topics listed in compact Sections 8.1.1 through 8.1.14, and the SIC is a specific application of the MICS, then why is CGCC-8 necessary? The answer is that it is not. Whatever the CGCC seeks through CGCC-8, it is not compact compliance. Rather, CGCC-8 appears to be yet one more calculated attempt by the State to impose control over, and violate the sovereignty of, California's Indian tribes.

In any event, during a recent hearing on this matter, Chairman Shelton stated that while the overwhelming majority of tribes operate under strong regulatory controls without problem, the CGCC knew of tribes that did not. The Tribe's response to that comment is that the State has the authority, as explained above, to ensure that tribes comply with their compacts. Perhaps the CGCC can avail itself of that authority, as the Bureau of Gambling Control has done repeatedly at Cache Creek.

3. The Tribe Has Submitted To NIGC Oversight

With respect to the Tribe, at least, CGCC-8 is redundant, even if it were appropriate. On December 4, 2007, the Tribe amended its gaming ordinance to require compliance with internal control standards that equal or exceed the MICS standards set forth in 25 C.F.R. part 542. The amended ordinance provides the NIGC the authority to enforce the internal control standards, just as it had prior to the *CRIT* decision. On January 11, 2008, the NIGC approved the Tribe's amended ordinance. That amended gaming ordinance explicitly provides that any failure to adopt the required internal control standards, any failure to comply with the standards, and any attempt to prevent or obstruct the NIGC from enforcing the standards is a violation of the ordinance.

This amendment of the Tribe's ordinance binds the Tribe to NIGC enforcement of the Tribe's internal control standards. Any argument that the NIGC lacks enforcement authority notwithstanding this amendment ignores the plain language of IGRA. Under IGRA, a tribe may conduct Class III gaming only when such activity complies with a valid NIGC-approved ordinance. 25 U.S.C. § 2710(d)(1)(A). Moreover, IGRA authorizes the NIGC to enforce a tribe's compliance with its gaming ordinance by levying a fine of up to $25,000 per violation or by closing the gaming facility. 25 U.S.C. § 2713(a); 25 C.F.R. § 573.6(a)(9). The *CRIT* decision had no bearing on the powers explicitly allocated to the NIGC to enforce violations tribal gaming ordinances. Accordingly, the Tribe's compliance with the internal control standards is far from "voluntary" (as the Detailed Response suggests), and is, in fact, required under pain of substantial civil fines and even closure of its gaming facility.

The CGCC's Detailed Response also suggests the amended gaming ordinances are subject to change at tribal whim. This assertion demonstrates a lack of understanding of the gaming ordinance process. Like any other ordinance, the gaming ordinance is a tribal law. More importantly, gaming ordinances cannot be modified without the NIGC's approval. Thus, any tribe subjecting itself to NIGC oversight through an amended gaming ordinance cannot relieve itself of that oversight "at any time," as the CGCC suggests. While the CGCC also asserts that the NIGC may not have the power to approve or deny a change to a gaming ordinance to the extent it deals with Class III regulation, that assertion is nothing more than rank speculation without the benefit of research.

The Detailed Response also suggests the NIGC lacks resources to conduct MICS compliance reviews, particularly in the post-*CRIT* environment. This, again, is not true. Between 1995 and 2005, the NIGC performed nine MICS compliance site visits and two licensing compliance site visits at Cache Creek. More important, since the *CRIT* decision, the NIGC has performed three MICS compliance site visits at Cache Creek. Clearly, the NIGC has no problem conducting MICS compliance reviews at tribal casinos.

4. The CGCC Has Failed To Consider In Good Faith Alternative Proposals

Some time ago, the Tribe's TGA submitted to the Association an alternative to CGCC-8. That proposal highlighted the authority the SGA *actually has* under the compact. Specifically, under the Tribe's proposal, each

tribal gaming agency would maintain an SIC that would equal or exceed the agency's established MICS. The SGA, in turn, could ensure each tribe's compliance with the SIC by conducting compliance reviews of the tribe's gaming operation. The SGA would then provide a draft written report of its findings to the tribe, which could either accept or dispute the findings. Disputes that could not be resolved informally or by the full CGCC would then be subject to the compact dispute resolution process.

The Tribe continues to believe that no additional regulation is necessary. If the CGCC insists on implementing a regulation, the one the Tribe's TGA prepared is the only proposal that complies with the compact.[4] Even if the CGCC is unwilling to consider Rumsey's proposal, there are alternatives others (including the Bureau of Gambling Control) have proposed, and alternatives yet to be explored, that might win Association approval where CGCC-8 cannot. The CGCC, however, has rejected other proposals out of hand, finding only fault with them. Rather than seek compromise, which should be the hallmark of the government-to-government relationships at issue, the CGCC has doggedly proceeded in its effort to force-feed to the tribes its ill-considered regulation despite unanimous objection from all sides, including the other half of the SGA.

Considering the CGCC's unwavering course to date, we anticipate that nothing in this letter (or in any other comment the CGCC will receive) will alter that course. Nevertheless, we expect the CGCC to address, specifically and in good faith, each of the points raised in this letter.

Sincerely,

Marshall McKay
Chairman
Rumsey Band of Wintun Indians

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[4] In its April 23, 2008 response to the Task Force Report, the CGCC claims it integrated into CGCC-8 portions of the Tribe's proposal. Substantively speaking, that is not true. Moreover, the CGCC never provided the Tribe's TGA any formal comments or response to its proposal. As for the Detailed Response and supplement, they do not address the Rumsey TGA's proposal at all.

cc: Dean Shelton, Chairman, California Gambling Control Commission
Stephanie Shimazu, Commissioner, California Gambling Control Commission
Sheryl Schmidt, Commissioner, California Gambling Control Commission
Alexandra Vuksich, Commissioner, California Gambling Control Commission

MIWOK / 1AIDU United Auburn Indian Community of the Auburn Rancheria

JESSICA TAVARES, CHAIRPERSON | JOHN SUEHEAD, VICE CHAIR | DAVID KEYSER, SECRETARY | DOLLY SUEHEAD, TREASURER | GENE WHITEHOUSE, COUNCIL MEMBER

November 18, 2008

Via Hand Delivery and Facsimile 916-263-0452

2008 NOV 18 PM 3:54

CONTI...

California Gambling Control Commission
ATTN: Evelyn Matteucci, Chief Counsel
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

RE: Comments on CGCC's Notice of Re-Adoption of Uniform Gaming Regulation CGCC-8 (MICS) Received November 5, 2008

Dear California Gambling Control Commissioners:

The United Auburn Indian Community ("United Auburn" or the "Tribe") thanks you for your invitation to submit comments on your Notice of Re-Adoption of Uniform Gaming Regulation CGCC-8 (Minimum Internal Control Standards) ("Notice").

I. Introduction and Summary.

CGCC-8 would require tribes to: (1) adopt internal control standards at least as stringent as the federal MICS and submit any variances to the CGCC; (2) submit annual financial and MICS audits to the CGCC; (3) submit to financial and MICS compliance reviews/audits by the CGCC; and (4) follow mandated procedures to address CGCC findings.

United Auburn supports and ensures strong and effective regulation of our Thunder Valley Casino. Upon careful study of your proposed action, we object to your proposed re-adoption of CGCC-8 because CGCC-8: (1) has not been approved by the Tribal-State Gaming Association ("Association") as required; (2) exceeds the authority granted to the State in our Tribe's Amended Compact, as the above listed requirements are not requirements of our Amended Compact and constitute instead a compact amendment installing the CGCC as the primary regulator of our operation; and (3) is unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published regulation of the NIGC.

We urge the State to work with the Association to draft a proposed regulation that is consistent with and authorized by the Compact for submission to the Association for approval, or alternatively, to work with our Tribe to draft regulatory standards and provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.

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II. The CGCC's Request to Provide Comments Within 17 days from the Day the CGCC Placed the Notice in the Mail is Unreasonable

As an initial procedural matter, United Auburn received your Notice on November 5, 2008. The Notice on the top of the first page is dated October 20, 2008, and page two states: "As provided in Compact section 8.4.1(c), your Tribe has 30 days from the date of this notice to submit comments on CGCC-8 to the Commission....To be considered, comments concerning the readoption of CGCC-8 must be received at the offices of the Commission no later than 5 p.m., Thursday, November 20, 2008." Your Notice included a "Proof of Service" attesting that it was "placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid, addressed to" our Tribal Chairperson on November 4, 2008.

We do not think it is reasonable to request comments within 17 days of placement of the Notice in the mail; nor do we think we are limited to this 17 days or 30 days after receipt of your Notice to provide comments. It is disappointing that this is the manner in which the CGCC chooses to consult with the Tribe and provide it with an opportunity to provide comments.

III. CGCC-8 Requires Association Approval To Become Effective.

While the Compact enables the State Gaming Agency to readopt and submit to Tribes for comment a proposed regulation that was *disapproved* by the Association, we disagree that it could thereafter become effective. Such a proposed regulation, whether in its original or amended form, would have to be resubmitted to the Association for approval to become effective.

Section 8.4.1(a) expressly states that, except for exigent circumstances, "no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has had an opportunity to review and comment on the proposed regulation." Therefore, *the Association's disapproval of the proposed regulation CGCC-8 rendered it ineffective.*

Contrary to recent CGCC staff assertions, subdivision (b) of Section 8.4.1 cannot be read to negate or render meaningless the requirement of Association approval under subdivision (a). Specifically, we disagree with CGCC staff assertions that the second sentence of subdivision (b) "provides a clear exception to the general proposition in subsection (a) of 8.4.1 that the regulation has to be approved by the Tribal-State Association" and "any other interpretation would render subdivision (b) mere surplusage."

Subdivision (b) implements subdivision (a) by expressly providing the manner in which the proposed regulation is submitted to the Association for approval, and then upon any Association disapproval, to each tribe for review and comment. The second sentence provides that if the Association disapproves a regulation, the State Gaming Agency may submit it to each tribe for comment only upon readoption, in its original or amended

form, with a detailed written response to the Association's objections. These comments from tribes are useful to the State Gaming Agency as it considers redrafting and/or resubmitting a proposed regulation to the Association for consideration, as well as to Association delegates upon any resubmission. Indeed, the proposed regulation may no longer be in a form considered by the Association delegates initially, again supporting the need to submit it to the Association. The second sentence of (b) may also provide a springboard from which the State and the tribe can negotiate memorandum of agreements or compact amendments pertaining to regulatory standards and provisions.

If Compact Section 8.4.1 were intended to allow a proposed state regulation to become effective without Association approval, this would be a dramatic shift of civil regulatory jurisdiction to the state and consequently the Compact would clearly provide for this. To the contrary, the only place where this is allowed is under subdivision (d), under exigent circumstances, which is later subject to Association disapproval.[1] In contrast, there is no exception language that supports the CGCC's interpretation that subdivision (b) provides an exception to subdivision (a). The Compact never intended or envisioned that the CGCC would have authority to unilaterally promulgate and enforce regulations governing tribal gaming operations without Association approval, as the CGCC is proposing to do here. Instead, the first subdivision of Section 8.4.1 clearly sets out the jurisdictional compromise agreed to between the State and our Tribe: "Except as provided in subdivision (d) [pertaining to exigent circumstances], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation."

IV. Proposed CGCC-8 Exceeds the Authority Granted to the State Gaming Agency in our Tribe's Amended Compact.

State civil regulatory jurisdiction is limited to Compact provisions. The only state civil regulatory jurisdiction that exists over a California Indian casino is through a Tribal-State Gaming Compact negotiated pursuant to IGRA.[2] Pursuant to the Indian Gaming Regulatory Act ("IGRA"), United Auburn entered into a Tribal-State Gaming Compact with the State of California in 1999, which was executed by Governor Davis, ratified by the California Legislature, approved by the United States Secretary of the Interior and published in the Federal Register. In 2004, United Auburn entered into negotiations with Governor Schwarzenegger, resulting in amendments to its 1999 Compact which were similarly approved and published under federal law ("Amended Compact" or "Compact").

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[1] CGCC staff and commissioners have acknowledged this proposed regulation is not being adopted under exigent circumstances subdivision (d).

[2] California does not have civil regulatory jurisdiction on Indian land absent a federal statute expressly conferring jurisdiction on the state. Public Law 280 did not confer such jurisdiction. (See 28 U.S.C. § 1360). The Tribe's Compact, at Section 8.2, expressly provides nothing therein affects the civil or criminal jurisdiction of the state under Public Law 280.

During our compact negotiations, we mutually agreed with the State on the best effective regulation of our Gaming Operation through the Compact, keeping in mind those federal and tribal regulatory provisions already in place. We granted certain regulatory rights and authority to the State while retaining the regulatory rights and authority that are best served by our tribal gaming regulatory agency ("TGA") or that of the federal regulatory agency, the National Indian Gaming Commission ("NIGC").

Compact Section 7.1 provides that it "is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact." Section 8.1 states that the Tribal Gaming Agency is vested with the authority to, and must, promulgate rules, regulations or specifications ("rules") governing a series of topics, which do *not* include a requirement to adopt or enforce the MICS. Amended Compact Section 7.5 provides for the testing of gaming devices by the TGA, independent auditors and the State Gaming Agency. Specifically, the TGA tests all game software before it is offered for play to ensure it is tested and approved by an independent or governmental gaming test laboratory as compliant with technical standards, annual independent audits for compliance are submitted to the State Gaming Agency, and the State Gaming Agency inspects gaming devices to confirm the games operate and play properly pursuant to the technical standards.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of such regulations is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state" *so that "rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency* in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent" with that regulation adopted by the state pursuant to Section 8.4.1.

There is no Compact provision that refers to the MICS.[3] Section 8.4.1 does not authorize a uniform state regulation on the MICS because it is not a matter encompassed by Section 6, 7, or 8 of the Compact. For instance, our Amended Compact Section 7.5 would not have been necessary if Section 8.4.1 required tribes to have in place internal controls at least as stringent as the MICS (which includes standards for gaming machines including testing and annual independent audits) and allowed the State Gaming Agency to test gaming devices for compliance, as proposed in CGCC-8.

The Compact does not require submission of financial audits to the CGCC. Compact Section 8.1.8 requires the Tribal Gaming Agency to adopt a rule requiring an independent CPA to conduct a financial audit at least annually and to ensure enforcement in an effective manner. Since these sections clearly establish the Tribal Gaming Agency as the responsible authority for regulating the annual independent financial audit of the tribal gaming operation, Section 8.1.8 does not provide legal authority for the CGCC to require

[3] The fact that the MICS was not included is no accident. At the time of the Compact negotiations, the National Indian Gaming Commission had promulgated federal minimum internal control standards, required tribes to adopt tribal standards that meet or exceed those federal standards, and enforced compliance with the foregoing.

submission of the financial audit report or to conduct compliance reviews/audits of the financials or of audited financial statements. In fact, compacts contain specific audit provisions for the State to verify revenue share, which clearly would have been unnecessary if the financial compliance review/audit proposed by CGCC-8 was authorized under the Compact.

The Compact does not authorize compliance reviews/audits of a Casino's compliance with the MICS or of the financials or of audited financial statements, as contemplated by CGCC-8. Section 8.1 expressly provides "the Tribal Gaming Agency shall be vested with authority" to promulgate rules governing the topics in Sections 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of Tribal Gaming Agency jurisdiction over these areas. *Nothing in Section 8.1 confers jurisdiction on the state to enforce the Tribal Gaming Agency rules pertaining to the gaming operation.*

The Compact could have directly required the gaming operation to comply with specified requirements on the subjects of Sections 8.1.1 through 8.1.14 and could have provided state jurisdiction to enforce those requirements. Instead, the Compact recognizes the primacy of the Tribal Gaming Agency, and in Section 8.1 expressly reserves to the Tribal Gaming Agency the authority over enforcement of compliance of the gaming operation with the rules it has adopted pursuant to Section 8.1.

Section 7.4 does not confer to state jurisdiction. Under Section 7.4, the state may inspect gaming facility Class III records where reasonably necessary to ensure compliance with the Compact. Section 7.4 cannot be read to negate Section 8.1, which expressly provides for Tribal Gaming Agency's authority and jurisdiction for enforcement. Instead, Section 7.4 authorizes the state to review the rules governing the subjects of Sections 8.1.1 through 8.1.10 to ensure such rules are in place and to review whether the Tribal Gaming Agency has a mechanism in place to ensure enforcement in an effective manner. Indeed, the State Gaming Agency has been conducting this type of compliance review for years through the California Department of Gambling Control (now the Bureau). The CGCC also recognized the limitations in the 1999 Compacts when it asserted in its budget change proposal for fiscal year 2006-2007 that the State has "restricted access to financial reports and information related to internal controls over gaming devices and gaming device revenues. California has limited Compact authority."[4]

Section 7.4 and its subsections simply do not authorize the CGCC to establish minimum internal control standards for tribal gaming operations, do not authorize the CGCC to mandate that Tribal Gaming Agencies submit copies of tribal internal control standards and annual audits (financial or MICS-related) to the CGCC, and do not authorize the CGCC to conduct the comprehensive and unrestricted compliance reviews contemplated by CGCC-8, or require Tribes to engage in mandated steps to address the CGCC's review findings.

[4] State of California Budget Change Proposal For Fiscal Year 2006-2007 submitted to Department of Finance, at page 1-8.

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CGCC-8 attempts to install the CGCC as the primary regulator of our gaming operation, a role that was not negotiated in our Amended Compact. CGCC-8 would constitute an unauthorized compact amendment.

We negotiated Compact amendments in 2004 *after* the CRIT decision. During these 2004 compact negotiations, we discussed regulatory enhancement and agreed upon Amended Section 7.5 for testing of gaming devices. However, the State did not require, and we did not agree to grant, any additional authority over our financial information or transfer authority to enforce full MICS compliance. In sharp contrast, we note that new compacts and compact amendments expressly grant to the State the additional authority that you are now attempting to obtain by CGCC-8.

V. CGCC-8 is Unnecessary, Duplicative, Unduly Burdensome, Unfairly Discriminatory, and Conflicts with a Published Final NIGC Regulation.

MICS Adoption and Compliance. United Auburn already has in place internal controls that are at least as stringent as the federal MICS. Our Tribal Gaming Agency monitors compliance and enforces the MICS on a daily basis as part of its on-site regulation, and also ensures the conduct of annual independent MICS audits. Moreover, United Auburn has granted the NIGC jurisdiction to monitor and enforce the MICS at the Tribe's Thunder Valley Casino through an amended gaming ordinance, approved and enforceable by the NIGC under IGRA.[5] The NIGC has performed a comprehensive MICS audit post-CRIT appellate decision. Therefore, CGCC-8 is unnecessary and duplicative of tribal and federal regulatory activities and would be unduly burdensome.[6]

Financial Audits and Compliance. Federal law requires annual independent financial audits to be conducted at our casino and submitted to the NIGC. The NIGC has regulatory authority over the conduct and results of the audit, as well as authority to conduct a financial audit itself. (See 25 U.S.C. § 2710(b)(2)(C)). The Compact, at Section 8.1.8, places the responsibility of ensuring the annual outside audit is conducted on the TGA. Thus, the financial audit requirements mandated by CGCC-8 are already in place with TGA and NIGC oversight, thereby duplicating existing tribal and federal activities and creating an unduly burdensome regulatory scheme.

State's Revenue Share. The CGCC states that CGCC-8 is necessary to "guarantee that [the State's] interest in the revenue sharing that is a part of each compact is secure." Our Amended Compact provides for flat fee payments to the State, and as such, the stated CGCC objective of securing the state's revenue share clearly does not apply and is unnecessary. Nor is MICS monitoring necessary to ensure an accurate counting of number of machines. At our casino, at which the number of gaming devices has

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[5] Just as the NIGC enforces the gaming ordinance under IGRA, the Tribe cannot amend its gaming ordinance without NIGC approval.

[6] Our Amended Compact Section 8.4.1(e) provides that the Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, conflicts with a published final NIGC or is unfairly discriminatory.

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remained relatively static, this proposition is not supported and is overbroad; moreover, this stated purpose could be accomplished by a number of less burdensome alternative ways.

Unfairly Discriminatory. Gaming activities over which the state has plenary authority are not subject to as rigorous regulation as CGCC-8 here. In fact, no MICS are in place for non-tribal gaming facilities in California. Despite the state beginning to draft MICS for cardrooms in 2003, as of this date, there are no MICS applicable to cardrooms, where the CGCC has full regulatory authority. The CGCC staff's most recent comments point out that cardrooms and racetracks are required to have external independent financial audits, which demonstrates the inequity. At our casino, annual external independent audits of MICS compliance and financials are performed as a matter of tribal and federal law, and each of these areas is monitored and enforced by tribal and federal regulatory agencies.

CGCC-8 Conflicts With a Final Published Regulation of the NIGC. Therefore, it could not take effect, even if approved by the Association, pending conclusion of the dispute resolution process. Even after the CRIT decision, the federal regulation setting for the MICS at 25 CFR Part 542 remains a final published regulation of the NIGC. Through the amended ordinance approved by the NIGC under IGRA, this federal regulation and NIGC's enforcement authority remains in effect at our gaming operation. CGCC-8 conflicts with this final published NIGC regulations in a variety of ways, including but not limited to subjecting our Tribe to potentially inconsistent and contradictory enforcement by two separate independent agencies, inconsistent MICS provisions due to federal MICS amendment, and contradictory variance approvals.

VI. Reservation of Rights; No Waiver

Our comments are provided in summary fashion and are not exclusive. Any point or argument not made herein is not waived.

VII. Conclusion

United Auburn supports and ensures strong and effective regulation and integrity of gaming at Thunder Valley Casino; Our Tribal Gaming Agency and the National Indian Gaming Commission monitor and enforce MICS compliance. However, we cannot support CGCC-8 because it is fatally flawed. We reiterate our recommendation that the State work with the Association to draft a proposed regulation consistent with and authorized by the Compact, or alternatively, to work with our Tribe to draft regulatory standards and provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.

Sincerely,

Jessica Tavares, Chairperson
United Auburn Indian Community

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Exhibit A7

TABLE MOUNTAIN RANCHERIA
TRIBAL GOVERNMENT OFFICE

November 17, 2008

Evelyn M. Matteucci, Esq.
Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

RE: Comments on Minimum Internal Control Standards, CGCC-8

Dear Ms. Matteucci:

The Table Mountain Rancheria (the "Tribe") respectfully submits the following comments on the proposed Uniform Tribal Gaming Regulation CGCC-8. The Tribe adopts in its entirety the Tribal-State Association Regulatory Standards Taskforce Final Report Statement of Need Regarding CGCC-8 of February 13, 2008. In addition, the Tribe submits the following specific comments:

A. Existing Regulation by the Tribe

CGCC-8 is unnecessary and unduly burdensome because it duplicates regulatory oversight already provided by the Tribe. Pursuant to the Compact between the State of California and the Tribe, the Tribal Gaming Agency is the primary regulator of the Tribe's gaming operation. The Tribal Gaming Agency, pursuant to the authority granted in Section 8.1 of the Compact, has implemented and enforces Tribal Minimum Internal Control Standards governing all aspects of its gaming operation. The Tribal MICS are as stringent as (if not more stringent than) those found at 25 C.F.R., part 542 (as in effect on October 1, 2006).

Furthermore, the Tribe has engaged, and will continue to engage, an independent Certified Public Accountant ("CPA") to provide an annual audit of the financial statements of its gaming operation. The financial statements are prepared, and financial audits are conducted, in accordance with generally accepted accounting principles, as supplemented by the standards for audit of casinos of the American Institute of Certified Public Accountants. The Tribe has provided, and will continue to provide, a copy of its audit financial statements to the National Indian Gaming Commission. In addition, the Tribe has engaged, and will continue to engage, an independent CPA to perform an annual "Agreed-Upon Procedures" audit in accordance with 25 C.F.R. § 542.3(f) to verify that its gaming operation is

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TABLE MOUNTAIN RANCHERIA
TRIBAL GOVERNMENT OFFICE

in compliance with the Tribal MICS.[1] Although the Tribal MICS are the property of the Tribe, the Tribe would be amenable to allowing the CGCC to review the Tribal MICS to confirm that they have been adopted.

B. Lack of CGCC Authority

As a starting point, the State of California lacks regulatory jurisdiction over the Tribe's activities on its federal trust land. *Bryan v. Itasca County*, 426 U.S. 373, 376 (1976). Accordingly, the CGCC may only regulate the Tribe's gaming operation to the extent the Compact specifically authorizes it to do so. Under the Compact, the CGCC lacks the authority to implement and enforce MICS or to demand a copy of the annual audits through regulation CGCC-8. Section 8.4 of the Compact, which refers to "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," does not authorize the CGCC to implement MICS. Rather, that section only relates to matters "encompassed by" Sections 6.0 (Licensing), 7.0 Compliance Enforcement), or 8.0 (Rules and Regulations for the Operation and Management of the Tribal Gaming Operation) of the Compact. None of those provisions, or any other provision of the Compact, for that matter, even mentions MICS. Because these sections of the Compact do not encompass MICS, the CGCC lacks the power to impose them by regulation.

Although Section 8.1.8 of the Compact provides for an annual audit of the gaming operation by an independent certified public accountant, Section 8.1 vests the Tribal Gaming Agency with the authority to regulate and enforce the audit. Nothing in these sections or elsewhere in the Compact authorizes the CGCC to participate in the audit process or to require the Tribe to provide a copy of audit materials to the CGCC.[2] Notwithstanding that the Tribe's audited financial statements and the "Agreed-Upon Procedures" audits are documents belonging to

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[1] The Compact specifies, at Section 8.1.8, that the person who conducts audits pursuant to the ordinance must be "independent" and must be a "certified public accountant." The Tribe objects to the CGCC-8 regulation to the extent that it imposes requirements not agreed upon in the Compact, such as licensure by the California Board of Accountancy.

[2] Compare Section 5.3(a) of the Compact, which specifically provides that "the Tribe shall Submit to the State" a Quarterly Contribution Report relating to Special Distribution Fund contributions. No such language appears anywhere in the provisions relating to the annual audit.

TABLE MOUNTAIN RANCHERIA
TRIBAL GOVERNMENT OFFICE

a sovereign tribal government and that the CGCC lacks authority to demand possession of such documents, the Tribe will allow the CGCC to view these materials to confirm the Tribe's compliance.

Because the CGCC lacks the authority under the Compact to impose MICS and to demand a copy of annual audits, the CGCC-8 regulation amounts to a material amendment of the Compact. Any such amendment must be arrived at through government-to-government negotiations between the Tribe and the State pursuant to Section 12.1 of the Compact and may not be unilaterally imposed by regulation.

C. Requirement of Tribal-State Association Approval

In any event, CGCC-8 cannot be enforced against any tribe's gaming operation unless and until the Tribal-State Association ("Association") approves it. Section 8.4.1(a) makes Association approval a prerequisite of any such enforcement and no provision in the Compact provides otherwise. Under well-established principles of federal Indian law, states may not regulate an Indian tribe's activities on tribal land. *Bryan v. Itasca County*, *supra*, 426 U.S. 373, 376; *see* 25 U.S.C. § 2701(5) ("Indian tribes have the exclusive right to regulate gaming activity on Indian lands . . . ."). In light of these principles, the Tribe never would have willingly accepted the diminution of its sovereignty that would result from a State agency unilaterally imposing regulations binding on the Tribe, its gaming operation, and its government. The Association-approval requirement puts in the hands of Association members — tribal and state gaming regulators — an important check on the CGCC's regulatory authority and the Compact must be construed to sustain this important protection of tribal sovereignty.

The Tribe welcomes a discussion of these comments with the CGCC and is open to conferring on the issues addressed in the comments on a government-to-government basis. To that end, and to confirm the Tribe's compliance with the mandates imposed on the Tribe and the Tribal Gaming Commission pursuant to the Tribe's Compact with the State of California, the Tribe is willing to provide annual notice to the CGCC that it has in place, and is operating pursuant to, Tribal MICS that are as stringent as, if not more stringent than, the current federal MICS set forth in 25 C.F.R., part 542. The Tribe is also willing to annually notify the

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CGCC that it has engaged an independent Certified Public Accountant ("CPA") to perform an annual audit of the financial statements of its gaming operation, in accordance with generally accepted accounting principles, and to perform an annual "Agreed-Upon Procedures" audit in accordance with 25 C.F.R. § 542.3(f). This notification, would further affirm that a copy of both audits have been submitted to the National Indian Gaming Commission, and identify the dates upon which such audits were submitted to the federal agency.

Sincerely,

Leanne Walker-Grant, Tribal Chairperson
Table Mountain RAncheria

cc: Dean Shelton, Chairman, CGCC

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Exhibit A8

PALA BAND OF MISSION INDIANS
35008 Pala Temecula Rd. PMB 50
Pala, CA 92059

Ph: (760) 891-3500
Fax: (760) 742-1411

2008 NOV 19 AM 11:28

November 18, 2008

Via Facsimile 916-263-0452 & Overnight Mail

California Gambling Control Commission
ATTN: Evelyn Matteucci, Chief Counsel
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

RE: Comments on CGCC's Notice of Re-Adoption of Uniform Gaming Regulation CGCC-8 (MICS) Received November 6, 2008

Dear California Gambling Control Commissioners:

The Pala Band of Mission Indians ("Pala Tribe" or the "Tribe") thanks you for your invitation to submit comments on your Notice of Re-Adoption of Uniform Gaming Regulation CGCC-8 (Minimum Internal Control Standards) ("Notice").

I. Introduction & Summary.

CGCC-8 would require tribes to: (1) adopt internal control standards at least as stringent as the federal MICS and submit any variances to the CGCC; (2) submit annual financial and MICS audits to the CGCC; (3) submit to financial and MICS compliance reviews/audits by the CGCC; and (4) follow mandated procedures to address CGCC findings.

The Pala Tribe supports and ensures strong and effective regulation of our Pala Casino. Upon careful study of your proposed action, we object to your proposed re-adoption of CGCC-8 because CGCC-8: (1) has not been approved by the Tribal-State Gaming Association ("Association") as required; (2) exceeds the authority granted to the State in our Tribe's Amended Compact, as the above listed requirements are not requirements of our Amended Compact and constitute instead a compact amendment installing the CGCC as the primary regulator of our operation; and (3) is unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published regulation of the NIGC.

We urge the State to work with the Association to draft a proposed regulation that is consistent with and authorized by the Compact that could be approved by the Association, or alternatively, to work with our Tribe to draft regulatory standards and provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.

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II. The CGCC's Request to Provide Comments Within 17 days from the Day the CGCC Placed the Notice in the Mail is Unreasonable.

As an initial procedural matter, the Pala Tribe received your Notice on November 6, 2008. The Notice on the top of the first page is dated October 20, 2008, and page two states: "As provided in Compact section 8.4.1(c), your Tribe has 30 days from the date of this notice to submit comments on CGCC-8 to the Commission....To be considered, comments concerning the readoption of CGCC-8 must be received at the offices of the Commission no later than 5 p.m., Thursday, November 20, 2008."

Your Notice included two separate documents entitled "Proof of Service." One states that the Notice was "placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid, addressed to" our Tribal Chairman at an incorrect address ("PMB 50" with no street address) on October 20, 2008. The second states it was placed in the mail to our Tribal Chairman at the correct address on November 4, 2008.

We do not think it is reasonable to request comments within 17 days of placement of the Notice in the mail; Nor do we think we are limited to this 17 day period or 30 days after receipt of your Notice to provide comments. It is disappointing that this is the manner in which the CGCC chooses to consult with our Tribe and to provide us with an opportunity to provide comments.

II. CGCC-8 Requires Association Approval To Become Effective.

While the Compact enables the State Gaming Agency to readopt and submit to Tribes for comment a proposed regulation that was *disapproved* by the Association, we disagree that it could thereafter become effective. Such a proposed regulation, whether in its original or amended form, would have to be resubmitted to the Association for approval to become effective.

Section 8.4.1(a) expressly states that, except for exigent circumstances, "no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has had an opportunity to review and comment on the proposed regulation." Therefore, *the Association's disapproval of the proposed regulation CGCC-8 rendered it ineffective.*

Contrary to recent CGCC staff assertions, subdivision (b) of Section 8.4.1 cannot be read to negate or render meaningless the requirement of Association approval under subdivision (a). Specifically, we disagree with CGCC staff assertions that the second sentence of subdivision (b) "provides a clear exception to the general proposition in subsection (a) of 8.4.1 that the regulation has to be approved by the Tribal-State Association" and "any other interpretation would render subdivision (b) mere surplusage."

Subdivision (b) implements subdivision (a) by expressly providing the manner in which the proposed regulation is submitted to the Association for approval, and then upon any Association disapproval, to each tribe for review and comment. The second sentence

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provides that if the Association disapproves a regulation, the State Gaming Agency may submit it to each tribe for comment only upon re-adoption, in its original or amended form, with a detailed written response to the Association's objections. These comments from tribes are useful to the State Gaming Agency as it considers redrafting and/or resubmitting a proposed regulation to the Association for consideration, as well as to Association delegates upon any resubmission. Indeed, the proposed regulation may no longer be in a form considered by the Association delegates initially, again supporting the need to submit it to the Association. The second sentence of (b) may also provide a springboard from which the State and the tribe can negotiate memorandum of agreements or compact amendments pertaining to regulatory standards and provisions.

If Compact Section 8.4.1 were intended to allow a proposed state regulation to become effective without Association approval, this would be a dramatic shift of civil regulatory jurisdiction to the state and consequently the Compact would clearly provide for this. To the contrary, the only place where this is allowed is under subdivision (d), under exigent circumstances, which is later subject to Association disapproval.[1] In contrast, there is no exception language that supports the CGCC's interpretation that subdivision (b) provides an exception to subdivision (a). The Compact never intended or envisioned that the CGCC would have authority to unilaterally promulgate and enforce regulations governing tribal gaming operations without Association approval, as the CGCC is proposing to do here. Instead, the first subdivision of Section 8.4.1 clearly sets out the jurisdictional compromise agreed to between the State and the Pala Tribe: "Except as provided in subdivision (d) [pertaining to exigent circumstances], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation."

III. Proposed CGCC-8 Exceeds the Authority Granted to the State Gaming Agency in our Tribe's Amended Compact.

State Civil Regulatory Jurisdiction is Limited to Compact Provisions. The only state civil regulatory jurisdiction that exists over a California Indian casino is through a Tribal-State Gaming Compact negotiated pursuant to IGRA.[2] Pursuant to the Indian Gaming Regulatory Act ("IGRA"), the Pala Tribe entered into a Tribal-State Gaming Compact with the State of California in 1999, which was executed by Governor Davis, ratified by the California Legislature, approved by the United States Secretary of the Interior and published in the Federal Register. In 2004, the Pala Tribe entered into negotiations with Governor Schwarzenegger, resulting in amendments to its 1999 Compact which were similarly approved and published under federal law ("Amended Compact" or "Compact").

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[1] CGCC staff and commissioners have acknowledged this proposed regulation is not being adopted under exigent circumstances subdivision (d).

[2] California does not have civil regulatory jurisdiction on Indian land absent a federal statute expressly conferring jurisdiction on the state. Public Law 280 did not confer such jurisdiction. (See 28 U.S.C. § 1360). The Tribe's Compact, at Section 8.2, expressly provides nothing therein affects the civil or criminal jurisdiction of the state under Public Law 280.

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Our Tribe supports effective regulation of Indian gaming authorized by our Amended Compact. During our compact negotiations, we mutually agreed with the State on the best effective regulation of our Gaming Operation. We granted certain regulatory rights and authority to the State while retaining the regulatory rights and authority that are best served by our tribal gaming regulatory agency (the Pala Gaming Commission) or that of the Federal Government (the National Indian Gaming Commission).

Compact Section 7.1 provides that it "is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact." Section 8.1 states that the Tribal Gaming Agency is vested with the authority to, and must, promulgate rules, regulations or specifications ("rules") governing a series of topics, which do *not* include a requirement to adopt or enforce the MICS. Amended Compact Section 7.5 provides for the testing of gaming devices by the TGA, independent auditors and the State Gaming Agency. Specifically, the TGA tests all game software before it is offered for play to ensure it is tested and approved by an independent or governmental gaming test laboratory as compliant with technical standards, annual independent audits for compliance are submitted to the State Gaming Agency, and the State Gaming Agency inspects gaming devices to confirm the games operate and play properly pursuant to the technical standards.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of such regulations is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state" *so that "rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency* in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent" with that regulation adopted by the state pursuant to Section 8.4.1.

There is no Compact provision that refers to the MICS.[3] Section 8.4.1 does not authorize a uniform state regulation on the MICS because it is not a matter encompassed by Section 6, 7, or 8 of the Compact. For instance, our Amended Compact Section 7.5 would not have been necessary if Section 8.4.1 required tribes to have in place internal controls at least as stringent as the MICS (which includes standards for gaming machines including testing and annual independent audits) and allowed the State Gaming Agency to test gaming devices for compliance, as proposed in CGCC-8.

The Compact does not require submission of financial audits to the State Gaming Agency. Compact Section 8.1.8 requires the Tribal Gaming Agency to adopt a rule requiring an independent CPA to conduct a financial audit at least annually and to ensure enforcement in an effective manner. Since these sections clearly establish the Tribal Gaming Agency as the responsible authority for regulating the annual independent financial audit of the tribal gaming operation, Section 8.1.8 does not provide legal authority for the CGCC to require submission of the financial audit report or to conduct

[3] The fact that the MICS was not included is no accident. At the time of the Compact negotiations, the National Indian Gaming Commission had promulgated federal minimum internal control standards, required tribes to adopt tribal standards that meet or exceed those federal standards, and enforced compliance with the foregoing.

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compliance reviews/audits of the financials or of audited financial statements. In fact, compacts contain specific audit provisions for the State to verify revenue share, which clearly would have been unnecessary if the financial compliance review/audit proposed by CGCC-8 was authorized under the Compact.

The Compact does not authorize compliance reviews/audits of a casino's compliance with the MICS or of the financials or of audited financial statements, as contemplated by CGCC-8. Section 8.1 expressly provides "the Tribal Gaming Agency shall be vested with authority" to promulgate rules governing the topics in Sections 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of Tribal Gaming Agency jurisdiction over these areas. *Nothing in Section 8.1 confers jurisdiction on the state to enforce the Tribal Gaming Agency rules pertaining to the gaming operation.*

The Compact could have directly required the gaming operation to comply with specified requirements on the subjects of Sections 8.1.1 through 8.1.14 and could have provided state jurisdiction to enforce those requirements. Instead, the Compact recognizes the primacy of the Tribal Gaming Agency, and in Section 8.1 expressly reserves to the Tribal Gaming Agency the authority over enforcement of compliance of the gaming operation with the rules it has adopted pursuant to Section 8.1.

Nor does Section 7.4 confer this jurisdiction to the State Gaming Agency. Under Section 7.4, the state may inspect gaming facility Class III records where reasonably necessary to ensure compliance with the Compact. Section 7.4 cannot be read to negate Section 8.1, which expressly provides for Tribal Gaming Agency's authority and jurisdiction for enforcement. Instead, Section 7.4 authorizes the state to review the rules governing the subjects of Sections 8.1.1 through 8.1.10 to ensure such rules are in place and to review whether the Tribal Gaming Agency has a mechanism in place to ensure enforcement in an effective manner. Indeed, the State Gaming Agency has been conducting this type of compliance review for years through the California Department of Gambling Control (now the Bureau). The CGCC also recognized the limitations in the 1999 Compacts when it asserted in its budget change proposal for fiscal year 2006-2007 that the State has "restricted access to financial reports and information related to internal controls over gaming devices and gaming device revenues. California has limited Compact authority."[4]

In short, Section 7.4 and its subsections do not authorize the CGCC to establish minimum internal control standards for tribal gaming operations, do not authorize the CGCC to mandate that Tribal Gaming Agencies submit copies of tribal internal control standards and annual audits (financial or MICS-related) to the CGCC, and do not authorize the CGCC to conduct the comprehensive and unrestricted compliance reviews contemplated by CGCC-8, or require Tribes to engage in steps to address the CGCC's review findings.

[4] State of California Budget Change Proposal For Fiscal Year 2006-2007 submitted to Department of Finance, at page 1-8.

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CGCC-8 attempts to install the CGCC as the primary regulator of our gaming operation, a role that was not negotiated in our Amended Compact. CGCC-8 would constitute an unauthorized compact amendment.

We negotiated compact amendments in 2004 after the CRIT decision. The State was put on notice at that time in regards to the issue of NIGC MICS authority on tribal gaming. During our compact negotiations, we discussed regulatory enhancement and agreed upon Amended Section 7.5 for testing of gaming devices. However, the State did not require and we did not agree to grant any additional authority over our financial information or transfer authority to enforce full MICS compliance. We note that others who negotiated or re-negotiated their Compacts agreed to give the State the additional authority that you are now attempting to obtain in this regulation. The proper time to have requested the additional authority sought in this CGCC-8 was during those negotiations. In addition, the Pala Tribe has granted the NIGC jurisdiction to establish, monitor and enforce the MICS at Pala Casino which ensures effective regulation of Indian Gaming on Pala Tribal Lands.

IV. CGCC-8 is Unnecessary, Duplicative, Unduly Burdensome, Unfairly Discriminatory, and Conflicts with a Final Published NIGC Regulation.

MICS Adoption and Compliance. The Pala Tribe already has in place internal controls that are at least as stringent as the federal MICS. The Pala Gaming Commission monitors compliance and enforces the MICS on a daily basis as part of its on-site regulation, and also ensures the conduct of annual independent MICS audits. Moreover, the Pala Tribe has granted the NIGC jurisdiction to monitor and enforce the MICS at the Pala Casino through an amended gaming ordinance, approved and enforceable by the NIGC under the Indian Gaming Regulatory Act. Therefore, CGCC-8 is unnecessary and duplicative of tribal and federal regulatory activities and would be unduly burdensome.

Financial Audits and Compliance. Federal law requires annual independent financial audits to be conducted at Pala Casino and submitted to the NIGC. The NIGC has regulatory authority over the conduct and results of the audit, as well as authority to conduct a financial audit itself. (See 25 U.S.C. § 2710(b)(2)(C)). The Compact, at Section 8.1.8, places the responsibility of ensuring the annual outside audit is conducted on the Tribal Gaming Agency. Thus, the financial audit requirements mandated by CGCC-8 are already in place, with Tribal Gaming Agency and NIGC oversight, thereby duplicating existing tribal and federal activities and creating an unduly burdensome regulatory scheme.

State's Revenue Share. The CGCC states that CGCC-8 is necessary to "guarantee that [the State's] interest in the revenue sharing that is a part of each compact is secure." Our Amended Compact provides for flat fee payments to the State, and as such, the stated CGCC objective of securing the state's revenue share clearly does not apply and is unnecessary. Nor is MICS monitoring necessary to ensure an accurate counting of number of machines. At our casino, at which the number of gaming devices has remained relatively static, this proposition is not supported and is overbroad; moreover, this stated purpose could be accomplished by a number of less burdensome alternative ways.

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Unfairly Discriminatory. Gaming activities over which the state has plenary authority are not subject to as rigorous regulation as CGCC-8 here. In fact, no MICS are in place for non-tribal gaming facilities in California. Despite the state beginning to draft MICS for cardrooms in 2003, as of this date, there are no MICS applicable to cardrooms, where the CGCC has full regulatory authority. The CGCC staff's most recent comments point out that cardrooms and racetracks are required to have external independent [financial] audits, which demonstrates the inequity. At our Pala Casino, annual external independent audits of MICS compliance and financials are performed as a matter of tribal and federal law, and each of these areas is monitored and enforced by tribal and federal regulatory agencies.

CGCC-8 Conflicts With a Final Published Regulation of the NIGC. Therefore, it could not take effect, even if approved by the Association, pending conclusion of the dispute resolution process. Even after the CRIT decision, the federal regulation setting for the MICS at 25 CFR Part 542 remains a final published regulation of the NIGC. Through the amended ordinance approved by the NIGC under IGRA, this federal regulation and NIGC's enforcement authority remains in effect at our gaming operation. CGCC-8 conflicts with this final published NIGC regulations in a variety of ways, including but not limited to subjecting our Tribe to potentially inconsistent and contradictory enforcement by two separate independent agencies, MICS provisions due to federal MICS amendment, and variance approvals.

V. No Waiver.

Our comments are provided in summary fashion and are not exclusive. Any point or argument not made herein is not waived.

VI. Conclusion.

The Pala Tribe supports strong and effective regulation, and the Pala Gaming Commisson and National Indian Gaming Commission monitor and enforce MICS compliance at Pala Casino. However, we cannot support CGCC-8 because it is fatally flawed. We urge the State to work with the Association to draft a proposed regulation that is consistent and authorized by the Compact for submission to the Association for approval, or alternatively, to work with our Tribe to draft regulatory standards and provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.

Sincerely,

Robert Smith, Chairman
Pala Band of Luiseno Mission Indians of the Pala Reservation

Trinidad Rancheria

November 18, 2008

Via Facsimile 916-263-0452

California Gambling Control Commission
ATTN: Evelyn Matteucci, Chief Counsel
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

RE: Comments on CGCC's Notice of Re-Adoption of Uniform Gaming Regulation CGCC-8 (MICS)

Dear California Gambling Control Commissioners:

The Cher-Ae Heights Indian Community of the Trinidad Rancheria ("Trinidad Rancheria " or the "Tribe") thanks you for your invitation to submit comments on your Notice of Re-Adoption of Uniform Gaming Regulation CGCC-8 (Minimum Internal Control Standards) ("Notice").

I. Introduction and Summary

CGCC-8 would require tribes to: (1) adopt internal control standards at least as stringent as the federal MICS and submit any variances to the CGCC; (2) submit annual financial and MICS audits to the CGCC; (3) submit to financial and MICS compliance reviews/audits by the CGCC; and (4) follow mandated procedures to address CGCC findings.

Trinidad Rancheria supports and ensures strong and effective regulation of our gaming operation. Our Tribe objects to your proposed re-adoption of CGCC-8 because CGCC-8: (1) has not been approved by the Tribal-State Gaming Association ("Association") as required; (2) exceeds the authority granted to the State in our Tribe's Compact, as the above listed requirements are not requirements of our Compact and constitute instead a compact amendment installing the CGCC as the primary regulator of our operation; and (3) is unnecessary, duplicative, unduly burdensome, and unfairly discriminatory.

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We urge the State to work with the Association to draft a proposed regulation that is consistent with and authorized by the Compact that could be approved by the Association, or alternatively, to work with our Tribe to draft regulatory standards and provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.[1]

II. CGCC-8 Requires Association Approval To Become Effective.

While the Compact enables the State Gaming Agency to readopt and submit to Tribes for comment a proposed regulation that was *disapproved* by the Association, we disagree that it could thereafter become effective. Such a proposed regulation, whether in its original or amended form, would have to be resubmitted to the Association for approval to become effective.

Section 8.4.1(a) expressly states that, except for exigent circumstances, "no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has had an opportunity to review and comment on the proposed regulation." Therefore, *the Association's disapproval of the proposed regulation CGCC-8 rendered it ineffective.*

Contrary to recent CGCC staff assertions, subdivision (b) of Section 8.4.1 cannot be read to negate or render meaningless the requirement of Association approval under subdivision (a). Specifically, we disagree with CGCC staff assertions that the second sentence of subdivision (b) "provides a clear exception to the general proposition in subsection (a) of 8.4.1 that the regulation has to be approved by the Tribal-State Association" and "any other interpretation would render subdivision (b) mere surplusage."

Subdivision (b) implements subdivision (a) by expressly providing the manner in which the proposed regulation is submitted to the Association for approval, and then upon any Association disapproval, to each tribe for review and comment. The second sentence provides that if the Association disapproves a regulation, the State Gaming Agency may submit it to each tribe for comment only upon re-adoption, in its original or amended form, with a detailed written response to the Association's objections. These comments from tribes are useful to the State Gaming Agency as it considers redrafting and/or resubmitting a proposed regulation to the Association for consideration, as well as to Association delegates upon any resubmission. Indeed, the proposed regulation may no longer be in a form considered by the Association delegates initially, again supporting the need to submit it to the Association. The second sentence of (b) may also provide a springboard from which the state and tribe can negotiate memorandum of agreements or compact amendments pertaining to regulatory standards and provisions.

If Compact Section 8.4.1 were intended to allow a proposed state regulation to become effective without Association approval, this would be a dramatic shift of civil regulatory jurisdiction to the

[1] As an initial procedural matter, we also want to note that it is unreasonable to request comments within 30 days of placement of the Notice in the mail, as the CGCC did here; nor do we think we are limited to this period or 30 days after receipt of your Notice to provide comments.

55

State, and consequently the Compact would clearly provide for this. To the contrary, the only place where this is allowed is under subdivision (d) under exigent circumstances, which is later subject to Association disapproval.[2] In contrast, there is no exception language that supports the CGCC's interpretation that subdivision (b) provides an exception to subdivision (a). The Compact never intended or envisioned that the CGCC would have authority to unilaterally promulgate and enforce regulations governing tribal gaming operations without Association approval, as the CGCC is proposing to do here. Instead, the first subdivision of Section 8.4.1 clearly sets out the jurisdictional compromise agreed to between the State and our Tribe: "Except as provided in subdivision (d) [pertaining to exigent circumstances], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation."

III. Proposed CGCC-8 Exceeds the Authority Granted to the State Gaming Agency in our Tribe's Compact.

State Civil Regulatory Jurisdiction is Limited to Compact Provisions. The only state civil regulatory jurisdiction that exists over a California Indian casino is through a Tribal-State Gaming Compact negotiated pursuant to IGRA.[3] Pursuant to the Indian Gaming Regulatory Act ("IGRA"), Trinidad Rancheria entered into a Tribal-State Gaming Compact with the State of California in 1999, which was executed by Governor Davis, ratified by the California Legislature, approved by the United States Secretary of the Interior and published in the Federal Register ("Compact").

During our compact negotiations, we mutually agreed with the State on the best effective regulation of our gaming operation through the Compact, keeping in mind those federal and tribal regulatory provisions already in place. We granted certain regulatory rights and authority to the State while retaining the regulatory rights and authority that are best served by our tribal gaming regulatory agency or that of the federal regulatory agency, the National Indian Gaming Commission ("NIGC").

Compact Section 7.1 provides that it "is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact." Section 8.1 states that the Tribal Gaming Agency is vested with the authority to, and must, promulgate rules, regulations or specifications ("rules") governing a series of topics, which do *not* include a requirement to adopt or enforce the MICS.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of such

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[2] CGCC staff and commissioners have acknowledged this proposed regulation is not being adopted under exigent circumstances subdivision (d).

[3] California does not have civil regulatory jurisdiction on Indian land absent a federal statute expressly conferring jurisdiction on the state. Public Law 280 did not confer such jurisdiction. (See 28 U.S.C. § 1360). The Tribe's Compact, at Section 8.2, expressly provides nothing therein affects the civil or criminal jurisdiction of the state under Public Law 280.

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regulations is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state" *so that "rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency* in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent" with that regulation adopted by the state pursuant to Section 8.4.1.

There is no Compact provision that refers to the MICS.[4] Section 8.4.1 does not authorize a uniform state regulation on the MICS because it is not a matter encompassed by Section 6, 7, or 8 of the Compact.

The Compact does not require submission of financial audits to the CGCC. Our Compact Section 8.1.8 requires the Tribal Gaming Agency to adopt a rule requiring an independent CPA to conduct a financial audit at least annually and to ensure enforcement in an effective manner. Since these sections clearly establish the Tribal Gaming Agency as the responsible authority for regulating the annual independent financial audit of the tribal gaming operation, Section 8.1.8 does not provide legal authority for the CGCC to require submission of the financial audit report or to conduct compliance reviews/audits of the financials or of audited financial statements. In fact, compacts contain specific audit provisions for the State to verify revenue share, which clearly would have been unnecessary if the financial compliance review/audit proposed by CGCC-8 was authorized under the Compact.

The Compact does not authorize compliance reviews/audits of a casino's compliance with the MICS or of the financials or of audited financial statements, as contemplated by CGCC-8. Section 8.1 expressly provides "the Tribal Gaming Agency shall be vested with authority" to promulgate rules governing the topics in Sections 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Sections 8.1 is a recognition of Tribal Gaming Agency jurisdiction over these areas. *Nothing in Section 8.1 confers jurisdiction on the state to enforce the Tribal Gaming Agency rules pertaining to the gaming operation.*

The Compact could have directly required the gaming operation to comply with specified requirements on the subjects of Section 8.1.1 through 8.1.14 and could have provided state jurisdiction to enforce those requirements. Instead, the Compacts recognize the primacy of the Tribal Gaming Agency and in Sections 8.1 expressly reserves to the Tribal Gaming Agency the authority over enforcement of compliance of the gaming operation with the rules it has adopted pursuant to Section 8.1.

Section 7.4 does not confer this jurisdiction to the State Gaming Agency. Under Section 7.4, the state may inspect gaming facility Class III records where reasonably necessary to ensure compliance with the Compact. Section 7.4 cannot be read to negate Section 8.1, which expressly provides for Tribal Gaming Agency's authority and jurisdiction for enforcement. Instead, Section 7.4 authorizes the state to review the rules governing the subjects of Sections 8.1.1 through 8.1.10 to ensure such rules are in place and to review whether the Tribal Gaming Agency has a mechanism in place to ensure enforcement in an effective manner. Indeed, the State Gaming Agency has been conducting this type of compliance review for years through the

[4] The fact that the MICS was not included is no accident. At the time of the Compact negotiations, the National Indian Gaming Commission had promulgated federal minimum internal control standards, required tribes to adopt tribal standards that meet or exceed those federal standards, and enforced compliance with the foregoing.

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California Department of Gambling Control (now the Bureau). The CGCC also recognized the limitations in the 1999 Compacts when it asserted in its budget change proposal for fiscal year 2006-2007 that the State has "restricted access to financial reports and information related to internal controls over gaming devices and gaming device revenues. California has limited Compact authority."[5]

Section 7.4 and its subsections simply do not authorize the CGCC to establish minimum internal control standards for tribal gaming operations, do not authorize the CGCC to mandate that Tribal Gaming Agencies submit copies of tribal internal control standards and annual audits (financial or MICS-related) to the CGCC, and do not authorize the CGCC to conduct the comprehensive and unrestricted compliance reviews contemplated by CGCC-8, or require Tribes to engage in mandated steps to address the CGCC's review findings.

CGCC-8 attempts to install the CGCC as the primary regulator of our gaming operation, a role that was not negotiated in our Compact. CGCC-8 would constitute an unauthorized compact amendment.

IV. CGCC-8 is Unnecessary, Duplicative, Unduly Burdensome and Unfairly Discriminatory.

MICS Adoption and Compliance. Trinidad Rancheria already has in place internal controls that are at least as stringent as the federal MICS. Our Tribal Gaming Commission monitors compliance and enforces the MICS on a daily basis as part of its on-site regulation, and also ensures the conduct of annual independent MICS audits. Moreover, Trinidad Rancheria has communicated to the NIGC that it consents to the jurisdiction of the NIGC to monitor and enforce the MICS at our Tribe's casino, and we have been advised that NIGC plans to perform quarterly MICS compliance inspections in the upcoming year. Therefore, CGCC-8 is unnecessary and duplicative of tribal and federal regulatory activities and would be unduly burdensome.

Financial Audit and Compliance. Federal law requires annual independent financial audits to be conducted at our casino and submitted to the NIGC. The NIGC has regulatory authority over the conduct and results of the audit, as well as authority to conduct a financial audit itself. (See 25 U.S.C. § 2710(b)(2)(C)). The Compact, at Section 8.1.8, places the responsibility of ensuring the annual outside audit is conducted on the Tribal Gaming Commission. Thus, the financial audit requirements mandated by CGCC-8 are already in place with Tribal Gaming Commission and NIGC oversight, thereby duplicating existing tribal and federal activities and creating an unduly burdensome regulatory scheme.

Revenue Share. The CGCC states that CGCC-8 is necessary to "guarantee that [the State's] interest in the revenue sharing that is a part of each compact is secure." Our Tribe operates less than 350 gaming devices and therefore pays no revenue share to the State or other tribes. As such, the stated CGCC objective of securing revenue share clearly does not apply and is unnecessary.

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[5] State of California Budget Change Proposal For Fiscal Year 2006-2007 submitted to Department of Finance, at page 1-8.

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Undue Burden. Our tribal gaming operation operates less than 350 gaming devices and is deemed to be a Non-Compact Tribe for purposes of Section 4.3.2, under which our Tribe receives payments from the Revenue Sharing Trust Fund. This Compact section recognizes distinctions among large and small gaming operations. CGCC-8 is particularly unduly burdensome given the size and scope of our operation.

Unfairly Discriminatory. Gaming activities over which the state has plenary authority are not subject to as rigorous regulation as CGCC-8 here. In fact, no MICS are in place for non-tribal gaming facilities in California. Despite the state beginning to draft MICS for cardrooms in 2003, as of this date, there are no MICS applicable to cardrooms, where the CGCC has full regulatory authority. The CGCC staff's most recent comments point out that cardrooms and racetracks are required to have external independent financial audits, which demonstrates the inequity. At our casino, annual external independent audits of MICS compliance and financials are performed as a matter of tribal and federal law, and each of these areas is monitored and enforced by tribal and federal regulatory agencies.

V. Reservation of Rights and No Waiver

Our comments are provided in summary fashion and are not exclusive. Any point or argument not made herein is not waived.

VI. Conclusion

Trinidad Rancheria supports and ensures strong and effective regulation of our gaming operation. However, we cannot support CGCC-8 because it is fatally flawed.

We urge the State to work with the Association to draft a proposed regulation that is consistent and authorized by the Compact that could be approved by the Association, or alternatively, to work with our Tribe to draft regulatory standards and provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.

Sincerely,

Garth Sundberg

Garth Sundberg, Chairman
Cher-Ae Heights Indian Community of the Trinidad Rancheria

Exhibit A10

San Manuel Band of Mission Indians
Tribal Gaming Commission
OFFICE OF THE COMMISSIONERS

Armando T. Ramos, Chairman
Julian Abarca, Gaming Commissioner
Robert Balderama, Gaming Commissioner

1888 East Highland Avenue
San Bernardino, CA 92404

(909) 475-1800
(909) 886-2107 Fax

P.O. Box 70
Patton, CA 92369

November 18, 2008

Federal Express

Evelyn Matteucci, Chief Counsel
State of California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

2008 NOV 20 AM 11:13

Re: Comments on CGCC-8

Dear Ms. Matteucci:

The San Manuel Band of Mission Indians ("Tribe") appreciates the opportunity to provide the following comments on CGCC-8 as amended and recently readopted by the California Gambling Control Commission ("CGCC"). We hope that our comments prove helpful both to the CGCC as well as to the Association during its future reconsideration of this important matter.

While the Tribe opposes passage of CGCC-8, it is important that the State of California ("State") recognize that our opposition is in no way connected with the NIGC MICS themselves. As you know, the Tribe has been in full compliance with the NIGC MICS since their inception, and has voluntarily agreed within our Letter of Agreement with the State to maintain these standards in full force and effect regardless of controlling case law. The NIGC MICS are not the issue here. Instead, we oppose CGCC-8 in its entirety because we believe that through this regulation, the CGCC would exceed its authority as conveyed in the Tribal-State Compact ("Compact"). And if the CGCC is permitted to adopt CGCC-8 now, without Association approval, a precedent would be set allowing the State to unilaterally impose on a tribe gaming regulatory obligations that are not contained in its Compact. As discussed more fully below, this is not what the Compact – or the federal law that authorized the Compact – prescribes.

In order to avoid the years of wasteful litigation that will surely result if the CGCC moves forward without Association approval, we encourage the CGCC to first consider the "safe-harbor" approach that is being promoted and which is described below. We believe that through this approach, the CGCC will be able to achieve its stated goals while acting within its authority under the Compact.

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CGCC-8 Exceeds the Authority Granted to the State in the 1999 Compacts

The authority to regulate Indian tribes is vested in the United States Congress, which has plenary authority over Indian affairs.[1] A state may not regulate an Indian tribe unless it is expressly authorized to do so by an act of Congress. The Indian Gaming Regulatory Act, which is such an act of Congress, *only* permits a state to regulate the class III gaming activities of tribes *to the extent agreed to by the tribe in a Tribal-State Compact*.[2] The question here is therefore whether the Compact authorizes the State and/or the CGCC to approve CGCC-8.[3] Without the consent and approval of the Association, it does not.

The CGCC has cited Compact Sections 6, 7 and 8 as sources of authority for CGCC-8, asserting that these sections grant it authority to promulgate regulations that require tribes to implement internal control standards that meet specified criteria. The agency has also implied that this claimed authority may be exercised even absent Association approval. We disagree with these arguments as these sections of the Compact do not authorize the CGCC to regulate tribes absent Association approval. And further, the State's authority to ascertain Compact compliance – which *is* granted in the Compact – is limited to the specific actions outlined in the Compact and still does not empower the State to adopt binding regulations absent Association approval.

To illustrate, Sections 7 and 8 of the Compact explicitly distinguish between two types of authority: Authority to *pass regulations*, which the Compact generally grants to Tribal Gaming Authorities ("TGA"),[4] and authority to *ascertain Compact compliance*, which the Compact grants to both TGAs and the State Gaming Agency ("SGA"). For example, Section 7.1 provides that "[i]t is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact..." and explicitly states that "the Tribal Gaming Agency shall adopt and enforce regulations ...." Section 8.1 provides that "[i]n order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations ...." These sections grant TGAs the first type of authority – the authority to pass regulations that bind the tribe. And while the Compact does – in Section 8.4 – impart to the CGCC some authority to promulgate regulations that bind tribes, that authority is limited by the requirement that regulations enacted by the CGCC may only become effective if they are approved by the Association. Clearly, when the parties to the Compact sought to grant authority to promulgate regulations, they stated this intent explicitly.

On the other hand, there are other provisions in Compact Sections 7 and 8 that grant a different type of authority. These provisions grant either the TGA or the SGA, or both,

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[1] U.S. Const Article 1 sec. 8.

[2] 25 U.S.C. § 2710(d)(3)(C).

[3] The CGCC – an agency of the State of California – can only exercise a legitimate state power that has been properly delegated to it by the State. The Gambling Control Act, which created the CGCC and establishes the agency's scope of authority, however does *not* grant the CGCC authority over Indian tribes or tribal governmental gaming. Thus, the CGCC's authority to do so must derive – if at all – from the Compact, and any action taken by the CGCC that is not enumerated in the Compact is thus beyond the scope of its authority.

[4] There is only one exception to the general rule that only TGAs have authority to pass binding regulations. That exception, discussed below, is found in section 8.4.1, which grants the SGA limited authority to pass such regulations, but only with the approval of the Association.

authority to take actions intended to assist them in ascertaining whether the gaming operations comply with the Compact. For example, Section 7.2 provides that the TGA "shall investigate any reported violation" of the Compact and "report significant or continued violations of this Compact ... to the State Gaming Agency." Section 7.4 grants the SGA the right to inspect the Casino and all records relating thereto, subject to certain conditions, in order to ascertain Compact compliance, and Section 7.4.4 grants the SGA "access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

The Compact clearly distinguishes between the authority to promulgate binding regulations and the authority to ascertain whether the gaming operation complies with those regulations and with the Compact. Except with Association approval, the TGA alone is entrusted with the first type of authority whereas the TGA and SGA are both granted the second type of authority, although the CGCC is already limited to determining if the Tribe is fulfilling its regulatory duties, not to enforce those regulations as such.[5] The State's role is thus limited in that the State may not – except by approval of the Association – pass regulations that bind the Tribe or the Casino. The State can only monitor Compact compliance and, if it perceives a violation, commence dispute-resolution procedures or seek Association approval for a regulation.

In response to the jurisdictional challenges raised in the Association Taskforce's Final Report, dated February 13, 2008, the CGCC argued that authority to promulgate CGCC-8 stems from the fact that Compact Section 8.4 contemplates State regulations intended to foster statewide regulatory uniformity of Class III gaming operations.[6] Because the Compact acknowledges that the State may pass such regulations, the argument goes, it must have implicitly granted the State unfettered authority to pass them.

We respectfully disagree with this argument. While Section 8.4 does, in fact, contemplate passage of some regulations by the SGA, it also requires that any such regulations be passed in accordance with Section 8.4.1. And Section 8.4.1 states unequivocally that a regulation passed by the SGA will not "be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association ...." Thus, while the Compact does permit the State to pass regulations that foster statewide uniformity, it also provides that the State can only do so upon Association approval. Without approval of the Association, the CGCC is not empowered to enact regulations that would bind the tribes. And here, the Association did not approve – and in fact explicitly disapproved – CGCC-8.

This of course does not mean that the State is without recourse if it feels that tribal gaming is not adequately regulated. The State in fact retains a very potent means of pushing tribes to act in accordance with its ideas about what the Compact requires. If the State believes that proper implementation of the Compact is lacking, the State is free to initiate dispute resolution procedures under Section 9 of the Compact arguing that the TGA's regulations fail to meet Compact requirements. The State may also, if it wishes, try to obtain Association

[5] Indeed, even section 8.4.1(d) of the Compact, which addresses the state's regulatory power under exigent circumstances, provides that regulations adopted under such circumstances become ineffective if not subsequently approved by the Association. Thus, under the Compact, the state is not entitled to unilaterally regulate tribes. Association approval is always required.

[6] Detailed Response at 4.

approval for a regulation that would require tribes to act in accordance with the State's ideas of what the Compact requires. The State cannot, however, usurp tribal authority for itself and promulgate regulations purporting to bind tribes. The Compact precludes that option absent Association approval.

A "Safe-Harbor" Approach to Regulatory Compliance

The issue here is not the NIGC MICS. Rather, the Tribe is concerned with the fact that the CGCC is attempting to exceed its authority under the Compact and force application of a specific standard on the tribes absent Association approval. Nothing in the Compact gives the State the right to do that. And because of a potential precedent that would be set if the State is successful in its attempts, tribes will have little choice but to resist this process. In order to avoid this outcome, we urge the CGCC to first consider a "safe-harbor" approach.[7] We believe that through this approach, described below, both MICS compliance and enforcement can be assured without confrontation or a diminishment of either the Tribes' or the State's sovereign powers.

It is important to note initially that while Section 8.1 of the Compact requires tribes to "promulgate, at a minimum, rules and regulations or specifications governing [various subjects designated in Sections 8.1 et. seq.] ... and to ensure their enforcement in an effective manner," the details of how to satisfy these broad and comprehensive requirements were left to the tribes. For example, while Compact Section 8.1.2 requires regulation of the physical safety of patrons and employees, it is for the tribe to determine the best way for it to achieve compliance with this requirement. This flexibility is especially important given the diversity of Indian country, and in particular, the diversity of Indian gaming.

With this in mind, the general idea behind the "safe-harbor" approach is that the CGCC may – preferably in concert with the Association – provide that any tribe that adopts the NIGC MICS as the basis of its Section 8.1 regulations (and any other internal control regulations that may be required in the Compact) will be deemed by the State to have complied with the Compact's requirement that proper internal control regulations be promulgated. This is not to say that adopting the NIGC MICS is the *only* way a tribe can achieve Compact compliance; this approach is saying only that by proceeding in this manner, the tribe is *guaranteed* the "safe-harbor" of Compact compliance.

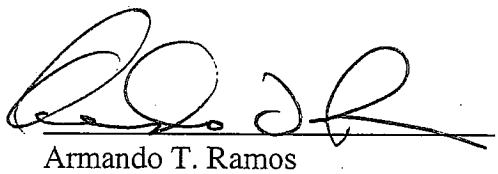
As the CGCC knows, there are many forms of MICS that are effective and thorough and which, if adopted by a tribe, would meet the Compact's requirements. The MICS of Nevada and Australia, to name two known sets of standards, have been well tested over time and may even, in certain situations, be more effective than those adopted by the NIGC. While this safe-harbor approach provides an avenue for certainty in the event a tribe chooses to adopt the NIGC MICS, it also provides flexibility if in the exercise of the tribe's discretion it determines that a different set of MICS would provide better protection. And, unlike the CGCC's current approach, the approach we recommend would be lawful under federal law and the Compact.

[7] It should be noted that our support for this approach is predicated on the assumption that all sections of CGCC-8 will be abandoned. By no means does the Tribe support the balance of CGCC-8.

Conclusion

In short, we respectfully request that the CGCC abandon CGCC-8 in its entirety because, lacking Association approval, it is not authorized to pass CGCC-8 as a binding regulation. And we further propose that the CGCC take a new approach, as described above. We believe that such a "safe-harbor" approach would garner Association support and would achieve the vast majority of the goals outlined by the CGCC. Not only would the existence of such a process enable the State to streamline adherence to the MICS without having to engage in the lengthy and adversarial dispute resolution process provided in the Compact, it would also encourage tribes to adopt the NIGC MICS because doing so would provide them with certainty regarding many aspects of Compact compliance. We urge the CGCC to adopt this approach.

Sincerely,



Armando T. Ramos
Gaming Commission, Chair

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Exhibit A11

Paskenta Band of Nomlaki Indians
P.O. Box 398
Orland, CA 95963
Phone: (530) 865-2010 Fax: (530) 865-1870

2008 NOV 19 AM 11:27

CONTROL

November 18, 2008

VIA FACSIMILE AND OVERNIGHT DELIVERY

Evelyn Matteucci
Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, California 95833

Re: Paskenta Band of Nomlaki Indians' Comments to CGCC-8

Dear Ms. Matteucci:

The Paskenta Band of Nomlaki Indians (the "Tribe") hereby opposes CGCC-8 adopted by the California Gambling Control Commission ("CGCC") on October 14, 2008. The CGCC lacks authority under Section 8.4.1 of the Tribe's 1999 Tribal-State Gaming Compact ("Compact") to unilaterally promulgate CGCC-8 without the Association's approval. CGCC-8 displaces the Tribe as the primary regulator of the Tribe's Gaming Operation and thereby constitutes an amendment of the Compact. The Tribe also objects to CGCC-8 on the grounds that the proposed regulation is unnecessary, unduly burdensome and unfairly discriminatory.

In 1999, the National Indian Gaming Commission ("NIGC") promulgated minimum internal control standards ("MICS") for Class II and Class III gaming, i.e., 25 CFR Part 542. Thereafter, the Colorado River Indian Tribes challenged the NIGC's authority over Class III gaming.[1] In 2005, the United States District Court for the District of Columbia determined that the NIGC lacked authority to adopt and enforce the MICS in regard to Class III gaming. The Court of Appeals for the District of Columbia affirmed the decision ("the CRIT Decision").[2] In response to this decision, the CGCC announced that it would adopt the federal MICS through CGCC-8 as a baseline standard for tribal gaming operations.[3] CGCC-8 also imposes other regulatory requirements upon the Tribe as discussed below.

The Tribe opened its Tribal Gaming Operation, Rolling Hills Casino, in 2002. Prior to the opening of Rolling Hills Casino, the Paskenta Tribal Gaming Commission adopted by regulation the federal MICS. Subsequently, the Tribe amended its Gaming Ordinance to include the federal MICS as part of the Ordinance. The amendment also requires the Tribe to perform an annual Agreed-Upon Procedures audit pursuant to the requirements of 25 CFR § 542.3(f), and

[1] *Colorado River Indian Tribes v. National Indian Gaming Commission*, 383 F.Supp. 2d 123 (D.C.C. 2005).
[2] *Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134 (DC Cir. 2006).
[3] Statement of Need for Adoption of Regulations Regarding Minimum Internal Control Standards (CGCC-8), April 6, 2007.

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authorizes the NIGC to monitor and enforce the Tribe's compliance with the federal MICS. The NIGC approved the amendment on May 13, 2008.

I. THE CGCC MAY NOT UNILATERALLY PROMULGATE CGCC-8

The CGCC may not unilaterally promulgate CGCC-8 without the Association's approval. Section 8.4.1 of the Compact provides the procedure for the State Gaming Agency to adopt regulations subject to the Association's approval. Subdivision (a) expressly provides that a regulation may not take effect unless: (i) the Association approves the regulation; and (ii) the State Gaming Agency provides the Tribe an opportunity to comment on the regulation.

> Except as provided in subdivision (d), no State Gaming Agency regulation shall be *effective* with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has had an opportunity to review and comment on the proposed regulation.[4]

Except as provided in subdivision (d), Association approval is required for any proposed regulation to be effective upon adoption by the CGCC. Since, the CGCC did not pursue adoption of CGCC-8 under exigent circumstances, the Tribe does not waive and reserves the right to contest any future CGCC action to adopt a regulation under exigent circumstances for which the Tribe objects to.

Subdivision (b) provides the procedures to implement the first requirement in subdivision (a), i.e., Association approval. The State Gaming Agency must submit a proposed regulation to the Association for consideration prior to submitting such regulation to the Tribe for comment. Subdivision (b) further provides that a proposed regulation disapproved by the Association may not subsequently be submitted to the Tribe for comment unless the State Gaming Agency re-adopts the "proposed regulation" and provides a detailed written response to the Association's objections. However, subdivision (b) does not state that a proposed regulation may take effect after the State Gaming Agency re-adopts the regulation and submits it to the Tribe for comment. Thus, subdivision (b) does not provide an exception to the requirement in subdivision (a) of Association approval of the proposed regulation. It merely provides a mechanism for broader consideration for by tribes.

Subdivision (c) contains the procedures related to implementing the second requirement in subdivision (a), i.e., providing the Tribe an opportunity to comment on the proposed regulation. The State Gaming Agency must provide the Tribe thirty (30) days to comment upon a proposed regulation prior to its adoption by the State Gaming Agency as a final regulation.[5]

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[4] Compact § 8.1.4(a).

[5] This function allows the Tribe an opportunity to object to a proposed regulation approved by the Association. Since the Tribe and not the Association is the signatory to the Tribe's Compact, the Tribe may contest a State Gaming Agency regulation approved by the Association under Section 9.0 of the Compact. Such a procedure does not render the re-adoption provision in subdivision (b) surplusage since the Tribe through the comment procedure may provide suggestions to the State for reshaping a regulation to obtain Association approval, or the State Gaming Agency through re-adopting the proposed regulation with a detailed response to the Association's objection may be able to convince the Tribe, itself, to agree to the proposed regulation despite the Association's objections.

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However, subdivision (c) is necessarily limited to proposed regulations approved by the Association because it does not expressly provide an exception to the requirement of Association approval set forth in subdivision (a).

Upon review of the Tribe's comments, the State Gaming Agency is required to resubmit the proposed regulation to the Association for review and approval pursuant to subdivision (a)'s requirement for Association approval. The CGCC's proposed actions ignore the words "[e]xcept as provided in subdivision (d)" and fail to give effect to the plain language of the Compact. Maxims of jurisprudence provide that "an interpretation which gives effect is preferred to one which makes void." The CGCC's interpretation of subdivisions (a) and (c) fails to give effect to the express language of subdivisions (a) and (c) – contrary to law. *See* Civil Code § 3541.

II. CGCC-8 DISPLACES THE TRIBE AND INSTALLS THE CGCC AS THE PRIMARY REGULATOR OF THE TRIBE'S GAMING OPERATION CONSTITUTING AN AMENDMENT OF THE TRIBE'S COMPACT

The Compact designates the Tribe, not the CGCC, as the primary regulator of the Tribe's Gaming Operation. "[T]he Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact."[6] The Tribal Gaming Agency must adopt rules, regulations, procedures and specifications for all Gaming Activities conducted under the Compact.[7] The Tribal Gaming Agency must also promulgate rules and regulations or specifications governing the subject matters set forth in Sections 8.1.1 through 8.1.14 to ensure their enforcement in an effective manner.[8] The Compact also states that the Tribal Gaming Agency serves as the on-site gaming regulator to enforce the terms of the Gaming compact.[9] In its role as the on-site regulator, the Tribal Gaming Agency must investigate reported violations of the compact and require the Gaming Operation to correct any violations under terms and conditions deemed necessary by the Tribal Gaming Agency.[10]

In contrast, the Compact provides the State Gaming Agency a limited, secondary inspection role that allows the State Gaming Agency to inspect the Tribe's Class III Gaming Activities and to inspect and copy the books, papers or records related to the Tribe's Gaming Operation where such access is reasonably necessary to ensure compliance with the Compact. In addition, Section 7.4.3(a) prohibits State inspections from interfering "with the normal function of the Gaming Operation or Facility." Therefore, Section 7.4 allows the State Gaming Agency to visit the Tribe's Gaming Facility to inspect/observe Class III Gaming Activities, request and obtain copies of books, papers, and records, and then to review such copied information off-site to determine Tribal Compact compliance.

CGCC-8 displaces the Tribe and installs the CGCC as the primary regulator of its Gaming Operation. Although the CGCC claims no such intention, the provisions of CGCC-8 prove otherwise. For example:

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[6] Compact § 7.4.
[7] Compact §§ 6.1 and 7.1.
[8] Compact § 8.1.
[9] Compact § 7.1.
[10] Compact § 7.2.

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(i) Sections (b) and (c) of CGCC-8 require the Tribe to adopt written internal control standards for the Tribe's Class III Gaming Operation that equal or exceed the federal MICS set forth in 25 CFR Part 542, and require the Tribe to implement an internal control system that ensures compliance with the MICS. In contrast, Sections 6.1, 7.1, and 8.1 of the Compact designates the Tribe as the entity that promulgates rules, regulations, procedures, specifications and standards to govern the Tribe's Gaming Operation.

(ii) Section (e) of CGCC-8 requires the Tribe to perform an annual financial audit regarding Class III gaming subject to certain standards imposed by the CGCC. Subsection (e) also requires the Tribe to submit the results of the audit and related work product to the CGCC. In contrast, Section 8.1.8 in conjunction with Section 8.1 designates the Tribe as the entity to establish such requirements. Further, the Compact does not expressly require the Tribe to submit an annual financial audit to the CGCC.

(iii) Section (f) of CGCC-8 requires the Tribe to conduct an annual Agreed-Upon Procedures audit in accordance with the requirements of 25 CFR § 542.3(f) and to submit such audit to the CGCC. However, no provision in the Compact requires the Tribe to perform an Agreed-Upon Procedures audit or conduct compliance audits pursuant to the requirements of 25 CFR § 542.3(f). In addition, the Compact does not expressly require the Tribe to submit an annual Agreed-Upon Procedures audit to the CGCC.

(iv) Section (h) of CGCC-8 allows the CGCC to conduct on-site compliance reviews and Sections (i) and (j) allow the CGCC compel the Tribe to prepare action plans or comply to CGCC action plans to cure findings of non-compliance. Section (h) represents a unilateral expansion of the CGCC's enforcement authority unsupported by any provision in the Compact. Section 7.1 specifically states that the Tribe and not the CGCC is the on-site regulator of the Tribe's Gaming Operation.

Imposition of the above requirements upon the Tribe is inconsistent with the limited, secondary inspection authority of the CGCC under the Tribe's Compact and displaces the role of the Tribe as the primary regulator of the Tribe's Gaming Operation. The CGCC becomes the primary regulator when it dictates to the Tribe: (i) the standards of Tribal gaming regulations; (ii) the standards for conducting financial audits; (iii) the standards for conducting compliance reviews, i.e., Agreed-Upon Procedures audit; and (iv) the imposition of CGCC on-site auditing authority upon the Tribe's Gaming Operation. In displacing Tribe as the primary regulator, CGCC-8 effectively amends Sections 6.1, 7.1, 7.2 and 8.1 regarding the Tribe's primary regulator authority and amends Sections 7.4.1 through 7.4.5 regarding the CGCC's limited, secondary inspection authority.

It is important to note that the Compact already includes a procedure for the CGCC to determine whether the Tribe's Gaming Operation is in compliance with its Compact. The CGCC

may: (i) inspect/observe the Tribe's Class III Gaming Activities; (ii) copy the books, papers, and records of the Tribe's Class III Gaming Operation, and (iii) review such materials off-site where such access is reasonably necessary to ensure compliance with the Compact. The CGCC apparently has determined that its limited, secondary inspection authority set forth in Section 7.4 is ineffective and in response has launched a campaign to amend the Tribe's Compact to displace the Tribe as the primary regulator. The Compact does not authorize such unilateral action without the Tribe's consent. Section 12.0 of the Compact requires the Tribe and State to mutually agree to an amendment of the Compact.

III. CGCC-8 IS UNNECESSARY, UNDULY BURDENSOME AND UNFAIRLY DISCRIMINATORY

Prior to the opening of the Tribe's Gaming Operation, Rolling Hills Casino, the Paskenta Tribal Gaming Commission adopted by regulation the federal MICS. Subsequently, the Tribe amended its Gaming Ordinance to include the federal MICS as part of the Ordinance. The amendment also requires the Tribe to perform an annual Agreed-Upon Procedures audit pursuant to the requirements of 25 CFR § 542.3(f), and authorizes the NIGC to monitor and enforce the Tribe's compliance with the federal MICS. The NIGC approved the amendment on May 13, 2008.

Previously, the CGCC stated that State oversight of tribal Class III gaming is required because of the decision in *Colorado River Indian Tribes v. National Indian Gaming Commission* holding that the NIGC lacked regulatory authority over Class III gaming. Subsequently, the State announced a new position that it always possessed Class III regulatory authority over the Tribe based upon Sections 7.4 and 8.4 of the Compact. However, the State continues to claim, despite no supporting language in the Compact, that independent oversight authority is necessary to protect the integrity of Indian gaming[11] and that, in part CGCC-8 must be promulgated for such purpose. As discussed above, the provisions of CGCC-8 go far beyond the CGCC's limited, secondary inspection authority and displace the Tribe as the primary regulator of the Tribe's Gaming Operation. Such action is inconsistent with numerous express provisions of the Compact regarding the Tribe's primary regulator authority.

Based upon express language of the Compact, the Paskenta Tribal Gaming Commission's adoption and enforcement of the federal MICS, and the Tribe's amendment of its Gaming Ordinance as described above, the NIGC provides independent oversight of the Tribe's Gaming Operation. Under the Tribe's amended Gaming Ordinance, the NIGC may enforce the MICS against the Tribe. Further, the Tribe must submit an annual Agreed-Upon Procedures audit to the NIGC in addition to its annual financial audit. Therefore, CGCC-8 as an additional protective measure to protect the integrity of gaming and the Tribe's compliance with its Compact is unnecessary, unduly burdensome and unfairly discriminatory.

The CGCC responded to the Tribe's grant of oversight/enforcement authority to the NIGC as meaningless because as the CGCC argues, the Tribe could subsequently amend its gaming ordinance to terminate such authority. The CGCC seemingly asserts that the Tribe has engaged in chicanery to foil the State's attempt to impose CGCC-8 and that once the threat of

[11] Apparently, the CGCC has determined that the Tribe is incapable of performing this regulatory function.

CGCC-8 has been removed the Tribe will terminate NIGC oversight/enforcement authority. This assumption is disrespectful of the Tribe's relationship with the NIGC and inconsistent with the express findings and purpose of the Compact. The Tribe benefits from NIGC oversight/enforcement authority because the NIGC, and not the CGCC, has substantial experience and expertise in regulating Class III gaming. The NIGC is familiar with the Tribe's Gaming Operation. The Tribe does not need to expend considerable time and resources to educate the NIGC with regard to its Class III Gaming Activities since the NIGC possesses such knowledge and expertise.

The State has not substantively addressed the issue of whether CGCC-8 is unnecessary, unduly burdensome and unfairly discriminatory given the Tribe's grant of authority to the NIGC. The CGCC's failure to address this issue is likely due to the fact that CGCC-8 is, in fact, unnecessary, unduly burdensome and unfairly discriminatory in light of the amendment to the Tribe's Gaming Ordinance. The main provisions of CGCC-8, i.e., MICS standards, financial and compliance audit requirements, and independent regulatory oversight structure are derived from NIGC regulations including 25 CFR Part 542.

In response to CGCC-8, the Tribe amended its Gaming Ordinance to accomplish the objectives sought by the State, i.e., independent oversight of the Tribe's Gaming Operation, as a reasonable alternative to the imposition of CGCC-8. The assertion by the CGCC that such action is meaningless is incorrect as the Tribe is subject to the full enforcement authority of the NIGC. Any attempt by the Tribe to further amend its Gaming Ordinance to remove such authority is subject to the approval of the NIGC. The CGCC's assumption that the NIGC would be required by law to approve such an amendment is speculative. Moreover, the Tribe enjoys a positive government-to-government relationship with the NIGC and does not intend to trivialize or ruin that relationship through summary termination of NIGC oversight/enforcement authority.

The Tribe's grant of oversight/enforcement authority to the NIGC also renders CGCC-8 unnecessary, unduly burdensome and unfairly discriminatory in that the Tribe would be subject to multiple compliance audits by the Tribal Gaming Commission, NIGC and CGCC. Section (h) of CGCC-8 purports to grant authority to the CGCC to perform its own on-site compliance audit. Compliance audits require time and resources to complete. See 25 CFR § 542.3(f) regarding the scope and extent of Agreed-Upon Procedures audits. Section (h) of CGCC-8 does not limit the scope and extent of CGCC compliance audits and it does not limit compliance audits to measured responses resulting from compliance issues or problems noted in financial audits or Agreed-Upon Procedures audits. Undoubtedly, the CGCC will assert that it cannot limit the scope and extent of its compliance audits in order to protect the public interest. Presumably, the CGCC on its own initiative could institute random compliance audits of the scope and magnitude of Agreed-Upon Procedures audits. Simply put, being subject to an additional compliance audit by a third regulatory agency is unnecessary, unduly burdensome and unfairly discriminatory especially when the CGCC has provided no evidence justifying the need for such audits.

IV. APPLICATION OF FEDERAL STANDARDS REGARDING INCOSISTENT STATE REGULATIONS

Subdivision (e) of Section 8.4.1 of the Compact provides that the Tribe may object to a State Gaming Agency regulation on the ground that it "conflicts with a published final regulation of the NIGC." The CGCC conflicts with final published NIGC regulations in a variety of ways including, but not limited to, the potential for inconsistent and contradictory enforcement of the MICS. Although the CRIT Decision held that the NIGC could not adopt and enforce Class III MICS against tribes, the decision did not remove Class III gaming provisions from the Code of Federal Regulations. 25 CFR Part 542 remains a final published regulation of the NIGC, but the NIGC may not enforce the Class III gaming provisions of the regulation against tribes unless a particular tribe adopts the regulation and grants the NIGC oversight/enforcement authority. The Tribe has taken such action. Therefore, in regard to the Tribe 25 CFR Part 542 represents a final published regulation of the NIGC for purposes of subdivision (e) of Section 8.4.1 of the Tribe's Compact.[12]

Subdivision (e) of Section 8.4.1 of the Compact provides that if a conflict exists between a State Gaming Agency regulation and the final published regulation of the NIGC, the NIGC regulation shall govern pending conclusion of dispute resolution proceedings. Therefore, in the event that either the State or the Tribe pursues dispute resolution under Section 9.0 of the Compact or by other means regarding the promulgation and/or the enforcement of CGCC-8 against the Tribe, the final regulations of the NIGC adopted by the Tribe shall govern and provisions of the CGCC-8 may not be enforced against the Tribe during such dispute resolution proceedings.

V. RESERVATION OF RIGHTS AND CLARIFICATION OF THE RECORD

These comments are summary in nature and are not exclusive. Any point or argument not made herein is not waived.

The California Bureau of Gambling Control's proposed amendment of subsection (b) of CGCC-8 as set forth in its September 30, 2008 letter to the Commission appears to go beyond what the Tribe and the Paskenta Tribal Gaming Commission understood the Bureau's position to be at the September 4th meeting. Therefore, the Tribe and the Paskenta Tribal Gaming Commission only supports the position offered by the Bureau at the September 4th meeting and nothing more.

The "Safe Harbor" alternative approach referenced in the Commission's "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards" was offered by the Dry Creek Rancheria Band of Pomo Indians and not the Paskenta Tribal Gaming Commission.

VI. CONCLUSION

[12] 25 CFR § 542.4 provides rules for conflicts between federal gaming regulations and the state compact requirements. However, subdivision (e) of Section 8.4.1 of the Compact does not incorporate such rules for the resolution of disputes regarding conflicts between federal and state regulations.

For the reasons provided above, the Paskenta Band of Nomlaki Indians opposes CGCC-8 and respectfully requests the CGCC not to promulgate the proposed regulation.

Sincerely,

Everett Freeman

Everett Freeman
Chairman

cc: The Paskenta Tribal Council
The Paskenta Tribal Gaming Commission

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Exhibit A12

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CONTROL COMMISSION

November 20, 2008

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Via Hand Delivery and Facsimile 916-263-0452

California Gambling Control Commission
ATTN: Evelyn Matteucci, Chief Counsel
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

RE: Comments on CGCC's Notice of Re-Adoption of Uniform Gaming Regulation CGCC-8 (MICS)

Dear California Gambling Control Commissioners:

The Jackson Rancheria Band of Miwuk Indians of the Jackson Rancheria ("Jackson Rancheria " or the "Tribe") thanks you for your invitation to submit comments on your Notice of Re-Adoption of Uniform Gaming Regulation CGCC-8 (Minimum Internal Control Standards) ("Notice").

I. Introduction and Summary

CGCC-8 would require tribes to: (1) adopt internal control standards at least as stringent as the federal MICS and submit any variances to the CGCC; (2) submit annual financial and MICS audits to the CGCC; (3) submit to financial and MICS compliance reviews/audits by the CGCC; and (4) follow mandated procedures to address CGCC findings.

Jackson Rancheria supports and ensures strong and effective regulation of our Casino. We object to your proposed re-adoption of CGCC-8 because CGCC-8: (1) has not been approved by the Tribal-State Gaming Association ("Association") as required; (2) exceeds the authority granted to the State in our Tribe's Compact, as the above listed requirements are not requirements of our Compact and constitute instead a compact amendment installing the CGCC as the primary regulator of our operation; and (3) is unnecessary, duplicative, unduly burdensome, and unfairly discriminatory.

We urge the State to work with the Association to draft a proposed regulation that is consistent with and authorized by the Compact that could be approved by the Association, or alternatively, to work with our Tribe to draft regulatory standards and

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provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.[1]

II. CGCC-8 Requires Association Approval To Become Effective.

While the Compact enables the State Gaming Agency to readopt and submit to Tribes for comment a proposed regulation that was *disapproved* by the Association, we disagree that it could thereafter become effective. Such a proposed regulation, whether in its original or amended form, would have to be resubmitted to the Association for approval to become effective.

Section 8.4.1(a) expressly states that, except for exigent circumstances, "no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has had an opportunity to review and comment on the proposed regulation." Therefore, *the Association's disapproval of the proposed regulation CGCC-8 rendered it ineffective.*

Contrary to recent CGCC staff assertions, subdivision (b) of Section 8.4.1 cannot be read to negate or render meaningless the requirement of Association approval under subdivision (a). Specifically, we disagree with CGCC staff assertions that the second sentence of subdivision (b) "provides a clear exception to the general proposition in subsection (a) of 8.4.1 that the regulation has to be approved by the Tribal-State Association" and "any other interpretation would render subdivision (b) mere surplusage."

Subdivision (b) implements subdivision (a) by expressly providing the manner in which the proposed regulation is submitted to the Association for approval, and then upon any Association disapproval, to each tribe for review and comment. The second sentence provides that if the Association disapproves a regulation, the State Gaming Agency may submit it to each tribe for comment only upon re-adoption, in its original or amended form, with a detailed written response to the Association's objections. These comments from tribes are useful to the State Gaming Agency as it considers redrafting and/or resubmitting a proposed regulation to the Association for consideration, as well as to Association delegates upon any resubmission. Indeed, the proposed regulation may no longer be in a form considered by the Association delegates initially, again supporting the need to submit it to the Association. The second sentence of (b) may also provide a springboard from which the State and the tribe can negotiate memorandum of agreements or compact amendments pertaining to regulatory standards and provisions.

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[1] As an initial procedural matter, we want to note that it is unreasonable to request comments within 30 days of placement of the Notice in the Mail; Nor do we think we are limited to this period or 30 days after receipt of your Notice to provide comments. It is disappointing that this is the manner in which the CGCC chooses to consult with the Tribe and provide it with an opportunity to provide comments.

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If Compact Section 8.4.1 were intended to allow a proposed state regulation to become effective without Association approval, this would be a dramatic shift of civil regulatory jurisdiction to the state and consequently the Compact would clearly provide for this. To the contrary, the only place where this is allowed is under subdivision (d), under exigent circumstances, which is later subject to Association disapproval.[2] In contrast, there is no exception language that supports the CGCC's interpretation that subdivision (b) provides an exception to subdivision (a). The Compact never intended or envisioned that the CGCC would have authority to unilaterally promulgate and enforce regulations governing tribal gaming operations without Association approval, as the CGCC is proposing to do here. Instead, the first subdivision of Section 8.4.1 clearly sets out the jurisdictional compromise agreed to between the State and our Tribe: "Except as provided in subdivision (d) [pertaining to exigent circumstances], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation."

III. Proposed CGCC-8 Exceeds the Authority Granted to the State Gaming Agency in our Tribe's Compact.

State Civil Regulatory Jurisdiction is Limited to Compact Provisions. The only state civil regulatory jurisdiction that exists over a California Indian casino is through a Tribal-State Gaming Compact negotiated pursuant to IGRA.[3] Pursuant to the Indian Gaming Regulatory Act ("IGRA"), Jackson Rancheria entered into a Tribal-State Gaming Compact with the State of California in 1999, which was executed by Governor Davis, ratified by the California Legislature, approved by the United States Secretary of the Interior and published in the Federal Register ("Compact").

During our compact negotiations, we mutually agreed with the State on the best effective regulation of our Gaming Operation through the Compact, keeping in mind those federal and tribal regulatory provisions already in place. We granted certain regulatory rights and authority to the State while retaining the regulatory rights and authority that are best served by our tribal gaming regulatory agency (the Jackson Rancheria Tribal Gaming Agency) or that of the federal regulatory agency, the National Indian Gaming Commission ("NIGC").

Compact Section 7.1 provides that it "is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact." Section 8.1 states that the Tribal Gaming Agency is vested with the

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[2] CGCC staff and commissioners have acknowledged this proposed regulation is not being adopted under exigent circumstances subdivision (d).

[3] California does not have civil regulatory jurisdiction on Indian land absent a federal statute expressly conferring jurisdiction on the state. Public Law 280 did not confer such jurisdiction. (See 28 U.S.C. § 1360). The Tribe's Compact, at Section 8.2, expressly provides nothing therein affects the civil or criminal jurisdiction of the state under Public Law 280.

authority to, and must, promulgate rules, regulations or specifications ("rules") governing a series of topics, which do *not* include a requirement to adopt or enforce the MICS.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of such regulations is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state" *so that "rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency* in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent" with that regulation adopted by the state pursuant to Section 8.4.1.

There is no Compact provision that refers to the MICS.[4] Section 8.4.1 does not authorize a uniform state regulation on the MICS because it is not a matter encompassed by Section 6, 7, or 8 of the Compact.

The Compact does not require submission of the financial audit to the State. Our Compact Section 8.1.8 requires the Tribal Gaming Agency to adopt a rule requiring an independent CPA to conduct a financial audit at least annually and to ensure enforcement in an effective manner. Since these sections clearly establish the Tribal Gaming Agency as the responsible authority for regulating the annual independent financial audit of the tribal gaming operation, Section 8.1.8 does not provide legal authority for the CGCC to require submission of the financial audit report or to conduct compliance reviews/audits of the financials or of audited financial statements. In fact, our Compact at Section 5.0 contain specific audit provisions for the State to verify revenue share, which clearly would have been unnecessary if the financial compliance review/audit proposed by CGCC-8 was authorized under the Compact.

The Compact does not authorize compliance reviews/audits of a casino's compliance with the MICS or of the financials or of audited financial statements, as contemplated by CGCC-8. Section 8.1 expressly provides "the Tribal Gaming Agency shall be vested with authority" to promulgate rules governing the topics in Section 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of Tribal Gaming Agency jurisdiction over these areas. *Nothing in Section 8.1 confers jurisdiction on the state to enforce the Tribal Gaming Agency rules pertaining to the gaming operation.*

The Compact could have directly required the gaming operation to comply with specified requirements on the subjects of Sections 8.1.1 through 8.1.14 and could have provided state jurisdiction to enforce those requirements. Instead, the Compact recognizes the primacy of the Tribal Gaming Agency and in Section 8.1 expressly reserves to the Tribal Gaming Agency the authority over enforcement of compliance of the gaming operation with the rules it has adopted pursuant to Section 8.1.

[4] The fact that the MICS was not included is no accident. At the time of the Compact negotiations, the National Indian Gaming Commission had promulgated federal minimum internal control standards, required tribes to adopt tribal standards that meet or exceed those federal standards, and enforced compliance with the foregoing.

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Section 7.4 does not confer this jurisdiction to the State Gaming Agency. Under Section 7.4, the state may inspect gaming facility Class III records where reasonably necessary to ensure compliance with the Compact. Section 7.4 cannot be read to negate Section 8.1, which expressly provides for Tribal Gaming Agency's authority and jurisdiction for enforcement. Instead, Section 7.4 authorizes the state to review the rules governing the subjects of Sections 8.1.1 through 8.1.10 to ensure such rules are in place and to review whether the Tribal Gaming Agency has a mechanism in place to ensure enforcement in an effective manner. Indeed, the State Gaming Agency has been conducting this type of compliance review for years through the California Department of Gambling Control (now the Bureau). The CGCC also recognized the limitations in the 1999 Compacts when it asserted in its budget change proposal for fiscal year 2006-2007 that the State has "restricted access to financial reports and information related to internal controls over gaming devices and gaming device revenues. California has limited Compact authority."[5]

Section 7.4 and its subsections do not authorize the CGCC to establish minimum internal control standards for tribal gaming operations, do not authorize the CGCC to mandate that Tribal Gaming Agencies submit copies of tribal internal control standards and annual audits (financial or MICS-related) to the CGCC, and do not authorize the CGCC to conduct the comprehensive and unrestricted compliance reviews contemplated by CGCC-8, or require Tribes to engage in steps to address the CGCC's review findings.

CGCC-8 attempts to install the CGCC as the primary regulator of our gaming operation, a role that was not negotiated in our Compact. CGCC-8 would constitute an unauthorized compact amendment.

IV. CGCC-8 is Unnecessary, Duplicative, Unduly Burdensome and Unfairly Discriminatory.

MICS Adoption and Compliance. Jackson Rancheria already has in place internal controls that are at least as stringent as the federal MICS. Our Tribal Gaming Agency monitors compliance and enforces the MICS on a daily basis as part of its on-site regulation, and also ensures the conduct of annual independent MICS audits. Moreover, Jackson Rancheria has communicated to the NIGC Chairman in writing that it consents to the jurisdiction of the NIGC to monitor and enforce the MICS at our Tribe's casino. The NIGC has continued to perform MICS compliance site visits. Therefore, CGCC-8 is unnecessary and duplicative of tribal and federal regulatory activities and would be unduly burdensome.

Financial Audits and Compliance. Federal law requires annual independent financial audits to be conducted at our casino and submitted to the NIGC. The NIGC has regulatory authority over the conduct and results of the audit, as well as authority to

[5] State of California Budget Change Proposal For Fiscal Year 2006-2007 submitted to Department of Finance, at page 1-8.

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conduct a financial audit itself. (See 25 U.S.C. § 2710(b)(2)(C)). The Compact, at Section 8.1.8, places the responsibility of ensuring the annual outside audit is conducted on the TGA. Thus, the financial audit requirements mandated by CGCC-8 are already in place with TGA and NIGC oversight, thereby duplicating existing tribal and federal activities and creating an unduly burdensome regulatory scheme.

State's Revenue Share. The CGCC states that CGCC-8 is necessary to "guarantee that [the State's] interest in the revenue sharing that is a part of each compact is secure." Our Compact provides for payments into the Special Distribution Fund at Section 5.0, which also contains explicit audit provisions. As such, the stated CGCC objective of securing the state's revenue share is unnecessary.

Unfairly Discriminatory. Gaming activities over which the state has plenary authority are not subject to as rigorous regulation as CGCC-8 here. In fact, no MICS are in place for non-tribal gaming facilities in California. Despite the state beginning to draft MICS for cardrooms in 2003, as of this date, there are no MICS applicable to cardrooms, where the CGCC has full regulatory authority. The CGCC staff's most recent comments point out that cardrooms and racetracks are required to have external independent financial audits, which demonstrates the inequity. At our casino, annual external independent audits of MICS compliance and financials are performed as a matter of tribal and federal law, and each of these areas is monitored and enforced by tribal and federal regulatory agencies.

V. No Waiver

Our comments are provided in summary fashion and are not exclusive, Any point or argument not made herein is not waived.

VI. Conclusion

Jackson Rancheria supports and ensures strong and effective regulation of our gaming operation. However, we cannot support CGCC-8 because it is fatally flawed.

We reiterate our recommendation that the State work with the Association to draft a proposed regulation that is consistent and authorized by the Compact that could be approved by the Association, or alternatively, to work with our Tribe to draft regulatory standards and provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.

Sincerely,

Irwin "Bo" Marks, Vice-Chairman
Jackson Rancheria Band of Miwuk Indians of the Jackson Rancheria

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PECHANGA INDIAN RESERVATION
Temecula Band of Luiseño Mission Indians

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November 20, 2008

Evelyn Matteucci, Chief Counsel
State of California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Pechanga Tribe Comments on CGCC Procedure to Promulgate CGCC-8

Dear Ms. Matteucci:

It is the understanding of the Pechanga Band of Luiseño Mission Indians ("Tribe") that the California Gambling Control Commission's ("Commission") approved proposed regulation CGCC-8 on October 14, 2008. The Tribe respectfully submits the following comments aimed solely at the proposed regulation's procedural flaws stemming from the Commission's failure to follow the process set forth in the Tribal-State Gaming Compact at 8.4.1.[1]

It is important to note at the outset that Pechanga does not substantively oppose the control standards the Commission supports as evidenced by our Memorandum of Agreement with the State adopting the MICS standards. We nonetheless oppose the manner in which the Commission is proceeding to adopt CGCC-8 because it purports to usurp the Tribe's right and duty under the Compact to promulgate regulations. Except in exigent circumstances, which do not apply here, the Commission cannot dictate any standards that are not set in the Compact without approval of the Tribal-State Association ("Association"). Absent Association approval the State's regulations cannot "be effective with respect to the Tribe's Gaming Operation." Compact section 8.4.1(a). Accordingly, we propose that the Commission adopt an alternative approach, outlined below, that would enable it to reach its stated goals without exceeding its jurisdiction.

Our comment proceeds in two parts. First we outline our proposal regarding alternative means of achieving widespread adoption of the NIGC MICS. The Tribe proposes that the Commission replace its present effort with a new approach, outlined below, that would enable the Commission to achieve its goals while acting within the authority granted to it by law. Our proposal would also enable the Commission to avoid, without risk of being able to later change its course if necessary, the litigation that may ensue if CGCC-8 is adopted utilizing the Commission's intended proposal for this regulation. That proposal will likely force tribes to take action to protect the balance of regulatory power established in the Compact. We then go on to provide detailed legal support for our position that the Commission lacks authority to promulgate the present regulation in the manner in which it is proceeding.

[1] The Tribe reserves the right to address any substantive issues at a later time.

Proposal

In its "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8) (amended form)" dated October 10, 2008 ("Detailed Response"), the Commission stated that it is imperative to put in place standards to protect the integrity of casino gaming operations. Detailed Response at pp. 2, 4. The Commission believes that it may force tribes to enact the NIGC MICS in order to achieve this goal. Because the Association disapproved CGCC-8, however, the Commission lacks authority to enact it as a binding measure. Nonetheless, there are other means at the Commission's disposal to meet the goal of protecting the integrity of casino gaming operations.

We suggest that the Commission can achieve statewide uniformity and compact compliance by providing – either through an Association-approved regulation or by unilateral statement – that if a tribe implements the federal MICS as threshold standards, the Commission will deem the tribe to be in compliance with section 8.1 of the Compact requiring tribes to promulgate rules for controlling internal operations. Adopting this sort of provision would provide tribes with a strong incentive to adopt the NIGC MICS because it would offer them an opportunity to achieve certainty in a key aspect of compact compliance in a manner already followed by most tribes. Such certainty is valuable because it provides tribes with the stability required to operate a successful gaming enterprise. While compliance with such a provision would be voluntary, the vast majority of tribes would undoubtedly adopt the standards it favors.[2] And, unlike the Commission's current approach, the approach we recommend would be lawful under federal law and the Compact.

In order to further encourage tribal adoption of MICS comparable to or more stringent than the NIGC MICS, the approach we propose would include a voluntary process for resolving disputes regarding MICS adoption and compliance that would be available to those tribes that adopted the NIGC MICS as a baseline. The existence of such a process would enable the state to streamline adherence to the MICS without having to engage in the lengthy and adversarial dispute resolution process provided in the Compact. Again, however, the State would not need to abandon its remedies under the Compact. This would simply provide a fair and neutral attempt to resolve disputes. And it would encourage tribes to adopt the MICS because it would enable them to resolve MICS-related disputes with the state while minimizing the burden of having to go through the Compact dispute resolution process.[3] Thus, the state would always be

[2] It should come as no surprise that most tribes have already adopted the MICS standards. The federal MICS were crafted pursuant to several years' of meetings among federal and tribal regulators and representatives of various disciplines in the gaming industry.

[3] In its Detailed Response the Commission purported to address a similar suggestion – that a non-adversarial dispute resolution process be implemented – by including an option, within CGCC-8, for review by the full Commission before compact dispute resolution is invoked. Detailed Response at 20. Obviously, however, the Commission's inclusion of optional review *within CGCC-8* is not an adequate response to the recommendation we now make. What we recommend here is that non-adversarial dispute resolution be included as part of a new regulation of the

free to challenge tribes that chose not to adopt or comply with the MICS using the Compact's dispute resolution process.

Finally, the approach we propose would provide a clear framework within which deviations from the standard MICS might be acceptable. For example, in the case of small gaming operations for which the full set of MICS might be inappropriate, the regulation would clarify which alterations the tribe may make while still being deemed to be in compliance with the Compact. Provisions allowing for this sort of standardized deviation from the general MICS would encourage small gaming tribes to comply with the MICS by providing them with realistic and appropriate standards while simultaneously providing the state with the standardization it seeks.

In its Detailed Response the Commission considered a "Safe Harbor" alternative that was similar to the one proposed here. The Commission responded to that alternative by commenting that CGCC-2 implements an arrangement similar to the one proposed here and explaining how and why the subject matter of CGCC-2 differs from the subject matter here. Detailed Response at 20-21. The Commission concluded that the differences in the subject matter at issue in CGCC-2 and here somehow explain why the procedure of CGCC-2 cannot also be used here. But the Commission's distinctions are, we suggest, erroneous because, like CGCC-2, the current proposal would also "allow a more streamlined process for a determination" of a finding of compact compliance. Detailed Response at 21.

The Commission's comments evidenced two sets of concerns. First, the Commission worried that not all tribes would voluntarily adopt the NIGC MICS as minimum standards and, of those that did, some might subsequently change their minds. This is troublesome to the Commission because it would require the Commission to work harder and expend more resources to ascertain Compact compliance. Second, the Commission feels that ascertaining Compact compliance is an important function that should be supplemented by authority to pass binding regulations.

The Commission's concern about the number of tribes that would choose to adopt the NIGC MICS as minimum standards is exaggerated. Testimonies and submissions have demonstrated that many tribes have adopted the MICS, and we submit that with this approach others will follow. To the extent any tribes remained that did not adopt the NIGC MICS as a baseline, the Commission would have to conduct individual compliance reviews just as they will have to do anyway. But that is what the State agreed to do in the Compact. The Commission cannot get out from under its obligation to conduct compliance reviews by unlawfully forcing tribes to take action that is not required of them under the Compact.

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sort described above that would be passed pursuant to Association approval. The Commission cannot cure the unlawfulness of the manner in which CGCC-8 is adopted by including an option for additional review within *that* regulation.

The Commission's second explanation as to why the approach recommended here is inadequate – the Commission's belief that ascertaining Compact compliance is an important function that should be achieved through binding regulation – is irrelevant when the Commission lacks the authority necessary to pass such binding regulations. The Commission is bound by the Compact and its authority is defined therein. The Compact grants the State Gaming Agency ("SGA") authority to ascertain whether the tribe is in compliance with its obligations, and enables the State to engage in dispute resolution if it concludes that the tribe is not in compliance. But the Compact does not grant the State authority to pass a binding regulation intended to keep the tribe in compliance with the compact *unless the Association approves the regulation.* We explain this matter in more detail below. Thus, the Commission's second objection to the approach proposed here is unconvincing.

In short, we propose that the Commission abandon the process it's utilizing to adopt CGCC-8 because, lacking Association approval, it cannot pass CGCC-8 as a binding regulation. Compact section 8.4.1(a). And we further propose that the Commission adopt a new regulation, with Association approval, as described above. We believe that a regulation of the sort described above would garner Association approval and would achieve the vast majority of the goals outlined by the Commission.

Detailed Analysis of Legal Argument: The Commission May Not Impose CGCC-8 Absent Association Approval

Introduction

Our opposition to the manner in which CGCC-8 is being promulgated is based in federal law, which provides that states can only regulate class III gaming to the extent agreed to by tribes, and in section 8.4.1(a) of our Compact which provides that State regulations affecting tribal gaming are only effective if approved by the Association. Because compliance with the particular standards found in CGCC-8 is not required under the Compact, tribes are not currently bound by those standards. If the Commission wishes to impose such compliance through regulation it must obtain Association approval.[4] When, as here, the Association disapproves a regulation, that regulation cannot be binding on the Tribe.

Allowing the Commission to pass CGCC-8 now, without Association approval, would create a precedent of enabling the Commission to singlehandedly regulate tribal gaming going forward. Yet that is not what the Compact – or the federal law that authorized the Compact – prescribes. Accordingly, if the Commission proceeds with the process its using to adopt CGCC-8 the tribes may be forced to litigate the matter in order to preclude the state from unlawfully

[4] Indeed, even section 8.4.1(d) of the Compact, which addresses the state's regulatory power under exigent circumstances, provides that regulations adopted under such circumstances become ineffective if not subsequently approved by the Association. Thus, under the Compact, the state is not entitled to unilaterally regulate tribes.

regulating class III gaming and to establish that tribes are not subject to mandatory regulation by the Commission.

In its Detailed Response, as in previous letters and publications issued in connection with CGCC-8, the Commission asserts that its authority to promulgate CGCC-8 – even without Association approval – stems from sections 7.4, 7.4.4, 8.4, and 8.4.1 of the Compact. Detailed Response at 13. And the Commission completely ignores section 8.4.1(a)'s provision that no state regulation can be binding unless first approved by the Association. For reasons explained below we respectfully disagree with the Commission's assertions. Most of the sections the Commission cites do not grant the Commission any regulatory power. Instead, they authorize the state to ascertain whether the tribal gaming operation complies with tribal regulations and with the Compact.[5] And section 8.4.1, which does grant the Commission limited regulatory power, explicitly provides that any regulations promulgated pursuant thereto will only be effective if approved by the Association. *See* section 8.4.1(a). Absent such approval no binding regulation may be enacted.

Analysis

Congressional intent regarding tribal gaming is very clear. The Indian Gaming Regulatory Act only permits a state to regulate tribal gaming operations *to the extent agreed by the tribe in a Tribal-State Compact.* 25 U.S.C. § 2710(d)(3)(C). The question here is whether the existing Tribal-State Compacts authorize the Commission to pass CGCC-8 without Association approval. They do not.

In its Detailed Response at 4, 5, 13, and 15 and in other related publications the Commission cites Compact sections 6, 7 and 8 as sources of authority for CGCC-8. And while the Commission never even mentions the provision of section 8.4.1(a) that no state regulation "shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association," its comments imply that the regulatory authority it claims exists in the Compact may be exercised even absent the requisite Association approval. We respectfully disagree with these arguments because sections 6, 7 and 8 do not authorize the Commission to regulate tribes absent Association approval. Here, the Association did not approve – and in fact explicitly disapproved – CGCC-8. Consequently, the State lacks authority to enact CGCC-8.

Sections 7 and 8 of the Compact, on which the Commission hangs its alleged authority, explicitly distinguish between two types of authority: Authority to *singlehandedly pass regulations*, which the Compact generally grants to Tribal Gaming Authorities ("TGA"),[6] and

[5] The Commission fails to distinguish between the authority to promulgate binding regulations and the authority to ascertain whether the gaming operation complies with those regulations and with the compact. The Compact grants the first type of authority (a) to Tribal Gaming Agencies acting alone and (b) to the State Gaming Agency upon approval of the Association. We discuss this in further detail below. But the Compact explicitly provides that the State cannot regulate tribes absent Association approval.

[6] There is only one exception to the general rule that only TGAs have authority to pass binding regulations. That exception, discussed below, is found in section 8.4.1 which grants the SGA limited authority to pass such

authority to *ascertain Compact compliance*, which the Compact grants to both TGAs and the SGA. For example, section 7.1 provides that "[i]t is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact..." and explicitly states that "the Tribal Gaming Agency shall adopt and enforce regulations ..." Section 8.1 provides that "[i]n order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations ..." These sections grant TGAs the first type of authority – the authority to singlehandedly pass regulations that bind the tribe. Clearly, when the parties to the Compact sought to grant authority to promulgate regulations, they stated this intent explicitly.

On the other hand, there are other provisions in Compact sections 7 and 8 that grant a different type of authority. These provisions grant either the TGA or the SGA, or both, authority to take actions intended to assist them in ascertaining whether the gaming operations comply with the Compact. For example, section 7.2 provides that the TGA "shall investigate any reported violation" of the Compact and "report significant or continued violations of this Compact ... to the State Gaming Agency." Section 7.4 grants the SGA the right to inspect the Casino and all records relating thereto, subject to certain conditions, in order to ascertain Compact compliance, and section 7.4.4 grants the SGA "access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

In short, there is a clear distinction in the Compact between the authority to promulgate binding regulations and the authority to ascertain whether the gaming operation complies with those regulations and with the Compact. The TGA alone is entrusted with the first type of authority – except when the Association approves a regulation, in which case the State may also regulate – whereas the TGA and SGA are both granted the second type of authority. The State's role is thus limited in that the State may not – except by approval of the Association – pass regulations that bind the Tribe or the Casino. The State can only monitor Compact compliance and, if it perceives a violation, commence dispute-resolution procedures or seek Association approval for a regulation.

In response to the jurisdictional challenges raised in the "Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8", dated February 13, 2008, and to similar challenges raised by individual tribes, the Commission argued that authority to promulgate CGCC-8 stems from the fact that Compact section 8.4 contemplates State regulations intended to foster statewide regulatory uniformity of Class III gaming operations. Detailed Response at 4. Because the Compact acknowledges that the State may pass such regulations, the argument goes, it must have implicitly granted the State unfettered authority to pass them.

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regulations. But that authority is limited by the requirement of section 8.4.1(a) that all State regulations be approved by the Association. CGCC-8 fails to meet the requirements of section 8.4.1(a) and thus the Commission lacks authority to pass it.

We respectfully disagree with this argument. While section 8.4 does, in fact, contemplate passage of some regulations by the SGA, it also requires that any such regulations be passed in accordance with section 8.4.1. And section 8.4.1 states unequivocally that a regulation passed by the SGA will not "be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association ...." This is true even in the event of "exigent circumstances." While section 8.4.1(d) provides the only exception to the general rule that Association approval must be obtained *before* a regulation enacted by the SGA may be binding on a tribe, even here Association approval must eventually be secured. Without the Association's approval, a regulation enacted under exigent circumstances "shall cease to be effective." Thus, while the Compact does permit the State to pass regulations that foster statewide uniformity, it also provides that the State can only do so upon Association approval. Without approval of the Association, the Commission is not empowered to enact regulations that would bind the tribes. And no such approval is forthcoming here.

This of course does not mean that the State is without any recourse if it feels that tribal gaming is not adequately regulated. If, for example, the State thinks that a given tribe's internal controls are less stringent than those required by the Compact, the State is free to initiate dispute resolution procedures under section 9 of the Compact arguing that the TGA's regulations fail to meet Compact requirements. But the State cannot usurp tribal authority for itself and promulgate regulations purporting to bind tribes. The Compact precludes that option and IGRA thus preempts it.

The Commission also cites sections 7.4 and 7.4.4 in its Detailed Response as though they grant the State regulation-making authority without the necessity of Association approval. Detailed Response at 5, 13. But those sections do no such thing. Sections 7.4 and 7.4.4 deal with the State's authority to take actions intended to assist it in ascertaining Compact compliance. Section 7.4 provides that "the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming ... and all Gaming Operation or Facility records relating thereto." Clearly, the section does not address, let alone grant, regulation-making authority. And section 7.4.4 provides that the "State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact." Again, the section neither addresses nor grants regulation-making authority.

The Commission implies that because it has authority to *monitor* Compact compliance it must also have authority to promulgate regulations that would secure such compliance. Detailed Response at 4, 13, 15. But the Commission provides no support for this argument, and in fact none is available. The Compact expressly addresses rulemaking. It explicitly provides that rulemaking authority may be exercised only by the TGA acting alone or by the SGA pursuant to Association approval. There is thus no basis for reading into the Compact an intent to provide independent rulemaking authority to the SGA.

The Commission further implies that the State's authority to monitor Compact compliance must entail authority to promulgate regulations that would secure such compliance

because absent the latter type of authority the State's authority to monitor Compact compliance is meaningless. Detailed response at 11. But of course this objection is unfounded because, as explained above, the State retains a potent means of enforcing its interpretation of what the Compact requires. If the State believes that proper implementation of the Compact is lacking the State is authorized to initiate dispute resolution procedures. The State may also, if it wishes, try to obtain Association approval for a regulation that would require tribes to act in accordance with the State's notions of what the Compact requires. But the Compact does not permit the State to directly regulate tribal gaming operations absent Association approval.

Conclusion

Allowing the Commission to bind tribes to requirements that are not included in Tribal-State compacts through a process that was not sanctioned in the Compact would be tantamount to enabling the Commission to unilaterally regulate tribal gaming. But federal law explicitly prohibits this. Indeed, as you well know, IGRA expressly precludes unilateral state regulation of tribal gaming and instead calls for a balance of state and tribal regulatory power achieved through a negotiated compact. While the Commission may be frustrated by what it views as insufficient state regulatory power over tribal gaming, it may not upset the power balance negotiated by tribes and the State in the Compact.

In this letter we have recommended an approach that would enable the Commission to achieve its goals while remaining within the bounds of its authority. We urge the Commission to adopt this approach.

Sincerely,

Mark Macarro
Tribal Chairman

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Exhibit A14

TULE RIVER TRIBAL COUNCIL
TULE RIVER INDIAN RESERVATION

2008 NOV 21 PM 4:05

CONTROL COMMISSION

November 20, 2008

Mr. Dean Shelton, Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, California 95833-4231

RE: COMMENTS TO CGCC 8

Dear Chairman Shelton:

The following are a reflection of the Tule River Tribe's comments in regard to CGCC 8:

1. That said CGCC 8 as proposed, is clearly an unnecessary duplication of regulation. Tribal Gaming is regulated at the Federal level, in regard to the MICS, by means of the NIGC approving Tribe's Gaming Ordinances that may include the requirement of a internal control standards, the State level by Section 8.1 which states, "...In order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum rules and regulations or specifications governing the following subjects, ...", and the Tribal level by means of the Tribal Gaming Ordinance.

2. That the Compact at Section 7.1 provides that the Tribal Gaming Agency is "...to conduct on-site gaming regulation and control in order to enforce the terms of the Gaming Compact, IGRA, and the Tribal Gaming Ordinance...To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein." Clearly, CGCC 8 is attempting to place the CGCC in the place of the day to day regulator. The Tribe is of the opinion that said regulation is premature and a regulation should be proposed that identifies and outlines how the CGCC intends to conduct its Inspections.

3. That IGRA states Sec. 2701 Findings The Congress finds that - "...(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity

Phone (559) 781-4271 Fax (559) 781-4610
P.O. Box 589 Porterville, California 93258

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M-380

is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."

These findings should be read within the context of all Compact terms, which would indicate that CGCC 8 is attempting to diminish Compact Section 8.1 etc. and intrude into the day to day regulation of Indian Gaming.

If you have any questions, please feel free to contact me at (559) 781-4271 ext. 1002.

Sincerely,

Neil Peyron, Chairman
Tule River Tribal Council

Cc: Terri Carothers, Chairperson
Tule River Tribe Gaming Commission

Amy McDarment, Gaming Commissioner
Tule River Tribe Gaming Commission

TULE RIVER TRIBAL COUNCIL

MARYHELLEN ACEVEDO

LEGAL ASSISTANT

PO BOX 589 • PORTERVILLE, CA 93257

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FACSIMILE TRANSMITTAL SHEET

To:	**From:**
Mr. Dean Shelton, Chairman	Maryhellen Acevedo
FAX NUMBER:	**Date:**
916-263-0499	November 20 2008
COMPANY:	**TOTAL NO. OF PAGES AFTER COVER SHEET:**
	2
PHONE NUMBER:	**SENDER'S REFERENCE NUMBER:**
Re:	**YOUR REFERENCE NUMBER:**

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Original following via Fed Ex

* * * COMMUNICATION RESULT REPORT (NOV. 20. 2008 1:15PM) * * *

FAX HEADER: TRTC

TRANSMITTED/STORED : NOV. 20. 2008 1:15PM

FILE	MODE	OPTION	ADDRESS	RESULT	PAGE
1	MEMORY TX		19162630499	OK	3/3

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

TULE RIVER TRIBAL COUNCIL

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FACSIMILE TRANSMITTAL SHEET

To: Mr. Dean Shelton, Chairman	**From:** Maryhellen Acevedo
FAX NUMBER: 916-263-0499	**Date:** November 20 2008
COMPANY:	**TOTAL NO. OF PAGES AFTER COVER SHEET:** 2
PHONE NUMBER:	**SENDER'S REFERENCE NUMBER:**
Re:	**YOUR REFERENCE NUMBER:**

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Original following via Fed Ex

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Exhibit A15

TUOLUMNE ME-WUK TRIBAL COUNCIL

Post Office Box 699
TUOLUMNE, CALIFORNIA 95379

Telephone (209) 928-5300
Fax (209) 928-1677

November 17, 2008

California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231
Attn: Chairman Dean Shelton

Re: Re-Adoption of CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The Tuolumne Band of Me-Wuk Indians (Tribe) provides the following responses to the California Gambling Control Commission's (CGCC) re-adoption of proposed uniform CGCC-8.

The Tribe is greatly concerned that the CGCC has decided to re-adopt CGCC-8 despite the overwhelming opposition and disapproval by the Tribal State Association after a very lengthy review period. Specifically, the CGCC was privy to, over the course of some twenty (20) months, numerous arguments against CGCC-8's implementation and adoption in various forms and CGCC-8's structural flaws. To this end the CGCC has so far failed miserably in its attempt to both justify the need for CGCC-8 and its re-adoption as a regulation, but most disturbing is the announced intent to promulgate CGCC-8 outside the agreed upon procedures for implementing gaming regulations in conjunction with the Tribal-State Association (Association), contained in the various versions of the Tribal-State Compact.

First, the means of re-adoption and the CGCC's refusal to submit CGCC-8 to the Association for a vote of approval is inconsistent with the language of the 1999 Tribal-State Compact (Compact), contractual language that the Tribe agreed to with the State of California and relies upon, which specifically states:

> "...no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation..." [1]

This simple two-part process could not be clearer. However, the apparent failure of the CGCC to forward the re-adopted version of CGCC-8 to the Association following the

[1] See Tribal-State Compact at Section 8.4.1 (a).

CGCC's re-adoption for the requisite approval is most troubling to the Tribe and smacks of both unilateralism and paternalism, and is shameful in light of the lessons learned during the State's infancy, during the State's early years of its dealings with Indians.[2] If the Tribe cannot rely on the agreed upon Compact language of Section 8.4.1, in its entirety, for practical purposes the Tribe cannot reasonably rely on the State to honor *any* of its commitments or language contained within the Tribe's Compact or the various Compacts in existence.

Second, the CGCC cannot justify the need for CGCC-8. In its Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)[3], the CGCC makes various justifications for the implementation of CGCC-8, which include: the presumed vacuum in regulation left by the Colorado River Indian Tribes decision; the State Gaming Agency's Authority under the various Compacts, Applications outside Tribal Gaming, uniformity in regulations, absence of alternatives to regulation and regulatory duplication. These points are discussed in detail below.

i. The CRIT Decision

In its support of CGCC-8 the CGCC argues that the Colorado River Indian Tribes (*CRIT*) decision and a supposed "vacuum" in regulation is the chief component for the policy rational behind the implementation of CGCC-8. However, this rational is misguided and although the *CRIT* decision held that the National Indian Gaming Commission (NIGC) lacked the authority to promulgate or enforce Minimum Internal Control Standards for Class III gaming, under basic contract law, the decision cannot unilaterally, nor does it, alter the terms of any of the Tribal-State Compacts.[4]

The State could have addressed its MICS concerns at the time of entering its 1999 Tribal-State Compact with sixty-one (61) tribes, but it failed to do so. Additionally, in subsequent compacts, the State also failed to include any reference to or negotiate for MICS provisions until 2006—and in doing so, MICS was included as a negotiated bargained for exchange. Thus, in the absence of the State demonstrating a concern for MICS, introduction of the CGCC-8, some nine-years after signing its initial Tribal-State Compact, is unjustified. Moreover, the absence of any need for a State mandated MICS within the last nine (9) years is telling and infers that until the CGCC's introduction of CGCC-8, the State believed whole heartedly that the Compact provided the Tribes with the primary responsibility over tribal gaming regulation, including MICS.

Additionally, included within its *CRIT* premise of need is that CGCC-8 is required to preserve independent oversight of Tribal MICS compliance, which will in turn increase

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[2] It should be noted that when the Association previously disapproved a different proposed regulation, specifically CGCC-7, consistent with Section 8.4.1, the CGCC revised the disapproved regulation addressing noted deficiencies, re-adopted the revised version and then appropriately presented CGCC-7 back to the Association for approval prior to being sent to the tribes for comment and ultimately implemented.

[3] See CGCC's Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8).

[4] See *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

public confidence in tribal gaming. The CGCC has not provided any evidence demonstrating a lack of independent oversight within tribal gaming, or evidence that the public lacks confidence in any of the games or devices operated by California tribes. Alternatively, the results of the Tribal Regulators Networking Group survey indicate otherwise, that the NIGC's federal MICS remains the standard for tribal gaming operations in California, notwithstanding *CRIT*.[5] Additionally, the general public is likely unaware of the purpose or existence of MICS and to allege that public confidence will increase due to the implementation of CGCC-8 is unsupportable.

Finally, the CGCC's use of the *CRIT* decision as the basis of CGCC-8's implementation also fails to address the regulations inclusion of financial audits. The *CRIT* decision does not touch upon nor address the role assumed by the NIGC concerning financial audits nor does the decision alter and/or modify the requirement of a yearly independent financial audit as set forth under Section 8.1.8 of the Compact and Indian Gaming Regulatory Act (IGRA) at 25 U.S.C. 2710(b)(2)(C).[6] As this federal requirement remains untouched by the *CRIT* decision, there appears to be no legitimate reason for the inclusion of financial audits within CGCC-8.

ii. Legal Authority

The CGCC cites to Compact Sections 8.4.1, 8.1.8 and 7.4 as the legal authority for implementing CGCC-8. (See CGCC "Statement of Need for Adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007). However, none of these Sections provide any legal authority for CGCC to unilaterally impose CGCC-8 upon the Tribes outside of the agreed upon procedures set forth in Section 8 of the various compacts.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of this regulatory adoption process is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state "so that 'rules regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0 and 8.0 shall be consistent." Thus, in the absence of complying with Section 8.4, uniformity in gaming regulations is compromised. Additionally, nowhere within the Compact does it provide the State the authority for unilateral adoption of regulations or to materially alter express provisions of the Compact or render any provisions null, void or unnecessary.

Materially altering express provisions of the Compact and or interpreting it in a manner wholly inconsistent with the written Compact language is exactly what the CGCC is attempting to accomplish to justify its adoption of CGCC-8. In its October 1, 2008 Explanatory Summary of Proposed Changes to CGCC-8 Minimum Internal Control Standards (MICS)(Amended Form Dated October 1, 2008) to be Considered at the October 14, 2008 Meeting, CGCC Chief Counsel, Evelyn M. Matteucci, referenced the

[5] See attached Tribal Regulators Networking Survey
[6] 25 U.S.C §2710 et seq.

Boghos v. Certain Underwriters at Lloyd's of London case in support of the proposition that the CGCC may adopt CGCC-8 outside the process set forth in the various forms of the Compact.[7] However, a review of the *Bogus* case, at footnote 1, ironically states that "where language is clear and express, it governs."[8] A review of Section 8.4 indicates there exists no ambiguity within the express written language requiring the interpretation permitted by *Bogus*, much less interpretation and/or deviation from the express and unambiguous language set forth by the various Compacts. In short, Mrs. Matteucci 's Compact interpretation and language wizardry is nothing more than a half hearted attempt to create a favorable legal interpretation and cloud the meaning of an otherwise perfectly clear regulatory approval process.

iii. Applications Outside Tribal Gaming

The CGCC readily admits that there presently exist no MICS provisions for any other form of gaming within the State of California. And although the State spent time and effort drafting MICS provisions for California's cardrooms, the cardroom industry and its various working groups, arrived at the conclusion that the final product revealed a lack of understanding of the purpose of MICS and how they should be applied in a cardroom environment. Moreover, the MICS provisions presented were a composite of NIGC's MICS and various other MICS statutes from other gaming states. As of the date of the February 2008, Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8 report, some five years after the State's 2003 attempt to draft MICS provisions, no cardroom MICS provisions have been adopted.

Ironically, concerning cardroom regulation the CGCC has *plenary* authority to adopt and implement MICS upon non-tribal gaming facilities throughout California. And although cardrooms and tribal gaming facilities have similar operational requirements, namely table games operations, currency drop and count and surveillance departments, the State does not, nor has it required, card rooms to implement MICS provisions. The fact that CGCC has permitted cardrooms to operate without MICS is both telling and discriminatory. It is also disturbing that the State does not act when it has *plenary* authority over a billion dollar cardroom industry, but affirmatively acts to impose its will upon California's tribal gaming industry, when it lacks the authority to do so.

iv. Uniformity in Regulation

The CGCC next alleges that CGCC-8 will "foster uniformity" within California's tribal gaming regulatory environment. CGCC-8 is not required to foster uniformity, because uniformity already exists. A Tribal Networking Group survey indicates that NIGC MICS remain the minimum standards for internal controls for California Indian tribes, despite the *CRIT* holding. Moreover, the fact is that Indian tribes, including California tribes, first supported the adoption of MICS to protect the integrity of Indian gaming as well as protecting tribal assets, the very heart of the purpose and policy of Indian gaming as set forth under the IGRA. Those tribes who were members of the National Indian Gaming

[7] *See Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495)
[8] *Bank of the West v. Superior Court* (1992) 2, Cal.4th 1254, 1264.

Association (NIGA) in the 1990's initiated what was referred to as the "MICS Work Group", and tribes voluntarily offered the services of their professionals, including internal auditors, accountants, gaming commissioners, managers, attorneys, etc., in developing a model MICS to be used by gaming tribes.

This model of cooperative MICS adoption is in stark contrast to the draconian adoption of MICS outside the legal parameters of adoption included in the various Compacts and which again smacks of unilateralism and paternalism. Moreover, compact regulatory uniformity will be very difficult to accomplish given the State's penchant for negotiating compact provisions with different goals and objectives. If the State truly wanted to create uniformity in regulation, it should have continued to use the 1999 model compact as opposed to deviating from it.

If the State, after permitting uniformity to go by the wayside, wishes to advance uniformity in regulation, it may do so by requesting each tribe adopt the NIGC MICS via compact amendments, as it recently did so with four re-negotiated compacts. These compacts included a Memorandum of Agreement (MOA) whereby the tribes agreed to implement the NIGC MICS and submit to enforcement and auditing by the State Gaming Agency. Absent arms length negotiations as noted by these recent compact amendments, the unilateral adoption of CGCC-8 is unnecessary. Moreover, the use of MOA's is proof that there is a viable alternative to addressing the State's MICS concerns outside of CGCC-8.

Pursuant to the terms of the Compact, the best and most appropriate approach to addressing the State's MICS concerns would be through compact negotiations with the Tribe—not through regulatory and political bureaucracy. Moreover, addressing the State's MICS concerns through an amendment of the Compact is the only true means of maintaining respect for tribal sovereignty, and is consistent with the State's established practice in dealing with other California gaming tribes. In the absence of respecting tribal sovereignty, the Tribe will have no choice but to seek all means of protecting and defending its interests from what the Tribe believes is a unilateral and unnecessary expansion of the State's regulatory role over tribal gaming through the proposed CGCC-8.

v. Alternatives to CGCC-8

Presently, California tribes are overwhelmingly opposed to CGCC-8. Additionally, as noted in the Detailed Response to Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8), seven tribes, and the California Department of Justice-Bureau of Gambling Control, provided comments opposing the CGCC's implementation of CGCC-8 in a manner that is both inconsistent with the express written provisions of the various Compacts and in a manner that is disrespectful to the tribes themselves.[9] Both the tribes and Department of Justice made suggestions varying from No CGCC-8, to

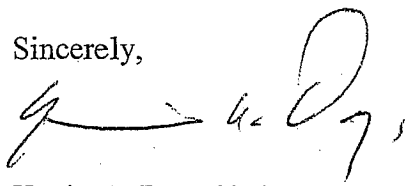
[9] See Tribal and Department of Justice-Bureau of Gambling Control, correspondence, included in the CGCC's Detailed Response to Association Objectives to Minimum Internal Control Standards (MICS) (CGCC-8), Exhibits A-1-A-8.

individual compact amendments and/or MOA's, legislative fixes, NIGC oversight and agreements between the State, tribes and CGCC. These alternatives are telling, and demonstrate a willingness by California tribes to engage the CGCC in its MICS concerns and attempt to formulate a reasonable and acceptable means of both addressing MICS and implementing and imposing it upon themselves.

Finally, CGCC-8 provides for an unequivocal expansion of the CGCC's oversight role by impermissibly establishing State mandated MICS—which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact. Moreover, the Tribe finds that CGCC-8 is entirely unnecessary, unduly burdensome and duplicative in light of the requirements contained in the Tuolumne Band of Me-Wuk Indians Gaming Ordinance (Ordinance) as approved by the National Indian Gaming Commission (NIGC) on June 26, 2001, in accordance with the Indian gaming Regulatory Act. Specifically, Section 4.11.19 of the NIGC approved Ordinance provides the Gaming Commission shall promulgate such regulations, policies and procedures as are necessary to carry out the orderly performance of its duties and powers, including, but not limited to, MICS at least as stringent as those issued by the NIGC (25 CFR 542). Furthermore, the Ordinance is entirely consistent with the agreed upon duties and authority granted to the Gaming Commission pursuant to Compact Section 8.1.

The Tribe therefore opposes CGCC-8 and additionally incorporates by reference those deficiencies and objections noted in the February 2008, Association Regulatory Standards Taskforce Final Report.[10] We respectfully urge the CGCC, to consider the above when advancing and considering the imposition of CGCC-8 upon the Tribe. We hope you reconsider your position and that the State immediately change course and address MICS in the only appropriate manner—through government-to-government negotiations in accordance with the IGRA.

Sincerely,



Kevin A. Day, Chairman
Tuolumne Band of Me-Wuk Indians

cc: Delmar Geisdorff, Chairman, Tuolumne Gaming Agency
Philip Hogen, Chairman, National Indian Gaming Commission
Jerry Brown, Attorney General, State of California
Matthew Campoy, Acting Director, Bureau of Gambling Control
Rosette & Associates, PC

[10] See Attached February 13, 2008, Association Regulatory Standards Taskforce Final Report.

ASSOCIATION REGULATORY STANDARDS TASKFORCE FINAL REPORT STATEMENT OF NEED RE. CGCC-8 FEBRUARY 13, 2008

I. INTRODUCTION

The California Gambling Control Commission (the "CGCC") submitted a draft proposed regulatory standard, CGCC-8, to the Tribal-State Association (the "Association") on July 11, 2007, prior to its adoption by the CGCC. The Association, in accordance with its adopted Protocol for Submission of Proposed State Regulatory Standards to the Association (the "Protocol"), created an Association Regulatory Standards Taskforce (the "Taskforce") to review CGCC-8. The Taskforce held its first meeting on Wednesday, August 8, 2007. The CGCC then submitted a revised proposed regulation to the Taskforce on September 7, 2007. Subsequent meetings were held on September 11, 2007, November 7, 2007, and January 9, 2008. These meetings were attended by a majority of the tribal regulators and representatives from the State of California (the "State").

The purpose of the Taskforce meetings was to discuss proposed criteria and information necessary to analyze and review the proposed regulation. Pursuant to the Protocol, the Taskforce is charged with providing a Statement of Need for the proposed regulation, including the rationale for the need based upon fact or policy. The Taskforce in developing this Statement of Need may consider the following: (i) economic impact on gaming operations, including whether the proposed regulatory standards impact small operations differently than large operations; (ii) whether the standard or policy embodied by these proposed regulatory standards is or will be applied to gaming facilities other than Indian casinos, such as card rooms and race tracks; if not whether there is any disparate impact or discriminatory effect created by the proposed regulatory standards; (iii) whether the proposed regulatory standards fosters uniformity; and (iv) alternatives to the proposed regulatory standards; (v) provide a statement of legal authority; (vi) if basis for regulatory standards is factual rather than policy based, address whether the proposed regulatory standards are duplicative. See Protocol for Submission of Proposed State Regulatory Standards to the Association, Amended January 21, 2004, Section (B)(2)(b).

In accordance with these duties, the Taskforce Chairman respectfully submits this final report and Statement of Need to the Association.

II. STATEMENT OF NEED

The CGCC has cited different rationales for CGCC-8. One rationale cited in the regulation is that the *CRIT* decision[1] "changed the contours" of a basic Tribal-State Compact premise that regulatory jurisdiction lies with federal, state and tribal governments when it held that the National Indian Gaming Commission (the "NIGC") does not have the authority to promulgate or enforce Minimum Internal Control Standards ("MICS") for Class III gaming. (Section (a) of CGCC-8.)

[1] *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

However, the *CRIT* decision does not and cannot change the terms of the Compact. The State could have expressly addressed the inclusion of MICS in the original 1999 Compacts, but did not do so.[2] Nor was this done in subsequent amendments, as the State of Arizona did when it negotiated new Compacts with Arizona tribes in 2003. The 2003 Arizona Compacts expressly require gaming tribes in that state to implement MICS, as amended from time to time. The CGCC's attempt to adopt and enforce the NIGC MICS as statewide regulations is an improper attempt to amend the terms of the Tribal-State Compact in circumvention of section 12.1 of the Compact.

The CGCC also contends that its proposed regulation is needed "to preserve the benefits of independent oversight of Tribal MICS compliance" and "serve to increase public confidence that Tribal gaming meets the highest regulatory standards." CGCC-8, subdivision (a). However, the results of the Tribal Regulator Networking Group's survey demonstrate that the NIGC MICS remain the applicable standards for tribal gaming operations in California, notwithstanding the *CRIT* decision. Thus, the rationale that CGCC-8 is needed to maintain uniform MICS for tribal gaming operations in California is also invalid. (See also Section VI(A), (B) below, addressing the necessity of CGCC-8).

The rationale that the regulation is needed to address the *CRIT* decision also does not explain why CGCC-8 contains provisions requiring financial audits. The *CRIT* decision did not affect the role the NIGC plays with respect to financial audits or alter the existing requirements for annual external financial audits found in both section 8.1.8 of the Tribal-State Compact and Indian Gaming Regulatory Act of 1988 (the "IGRA")[3] at 25 U.S.C. § 2710(b)(2)(C). Since the regulatory scheme relating to annual financial audits remains untouched by the *CRIT* decision, there is no legitimate basis for including the financial audit provisions in CGCC-8.

A. Economic Impact on Gaming Operations

The provisions of CGCC-8 requiring adoption of the NIGC MICS and an annual "Agreed-Upon Procedures" audit would not pose a significant economic impact because, as stated above, these requirements are already enforced by Tribal Gaming Agencies. The requirement in CGCC-8 for an annual audit of the gaming operation's financial statements also does not pose a significant economic impact because this requirement is already found in the IGRA, gaming ordinances and the Tribal-State Compact.

However, the provisions of CGCC-8 authorizing the CGCC to conduct undefined "on-site compliance reviews" and requiring tribes to work with the CGCC to resolve any disputed findings of the CGCC's compliance review may pose a significant economic impact on tribal gaming operations, particularly for smaller tribal gaming operations. Costs include the staff time dedicated to producing records and escorting CGCC staff in conducting comprehensive reviews/audits in addition to the cost of audits already being performed. The unrestricted

[2] The absence of the MICS was a product of negotiations among the parties during the compacting process. See footnote 7.
[3] 25 U.S.C. § 2701 et seq.

compliance reviews contemplated by CGCC-8 could require a tribe to devote a great deal of staff time to responding to the state auditors and their findings.[4]

B. Application to Card Rooms

The CGCC acknowledges that there are no MICS in place for non-tribal gaming facilities in California. Beginning in 2003, the State spent the better part of a year drafting MICS for the card rooms, eventually presenting them to representatives of the card rooms during a meeting in 2004. The reaction was decidedly negative as the State had not consulted with the advisory group of card room executives and attorneys, established for this very type of endeavor, during the year long drafting period and the final product revealed a concerning lack of understanding of MICS in general and how they should be applied to the card rooms. The State's MICS were a conglomeration of the NIGC' MICS and various statutes from Nevada and New Jersey. As of this report in 2008, *five years later*, no further MICS applicable to card rooms have been adopted.

CGCC-8's very existence thus represents a discriminatory approach to gaming regulation by the CGCC, which is all the more troubling because the CGCC has plenary jurisdiction to regulate non-tribal gaming facilities in California. Although the card rooms and tribal gaming facilities have in common some internal operations that inarguably require oversight – such as table games operations, currency drop and count and surveillance – the State does not require card rooms to implement MICS. Indeed, the State puts precious few requirements upon the card rooms such as a gambling license requirement, additional tables' requests and rules regarding third-party providers of proposition player services. This is *not* the case for tribal gaming operations, which have both federal and tribal oversight in addition to state oversight. The failure of the CGCC to impose MICS on non-tribal gaming facilities creates a true regulatory void and one that truly demands the State's immediate attention.

The fact that the CGCC has permitted non-tribal gaming facilities to operate without MICS for years but imposed such standards on tribal gaming operations almost immediately after the *CRIT* decision is telling. It suggests that the CGCC either ignores the fact that California tribes follow the NIGC MICS or does not respect the ability of tribal gaming agencies to enforce such standards, or both. It is disturbing that the State feels no urgency to exercise its unquestioned authority over the billion dollar a year card room industry and apparently feels compelled to impose an ill-advised and unnecessary regulation upon the tribal gaming facilities.

C. Fostering Uniformity

CGCC-8 is not needed to foster uniformity because uniformity already exists. As noted above, a Tribal Regulator Networking Group survey shows that the NIGC MICS remain the minimum standards for California tribes despite the *CRIT* decision.

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[4] In addition, the lack of experience of a newly formed agency conducting these comprehensive reviews/audits may increase the economic impacts.

It may be a little known fact that it was primarily Indian Tribes, including California Tribes, not the States that first supported the adoption of MICS to protect the integrity of Indian Gaming as well as the assets of the Indian Tribes in a uniform manner. Those Tribes who were members of the National Indian Gaming Association (NIGA) in the 1990s initiated what was termed a "MICS Work Group," and Tribes voluntarily offered the services of their professionals including internal auditors, accountants, gaming commissioners, gaming managers, attorneys, etc. to develop a model MICS to be used by any gaming Tribes, especially those Tribes who did not have the expertise and/or resources to develop their own MICS, so that those Tribes which were just starting out would have the ability to protect the integrity of their gaming operations. This NIGA MICS were used voluntarily by Tribes for many years, until the NIGC decided that they wanted to promulgate a Federal MICS. It is a well established fact that a large portion of the first MICS promulgated as a regulation by the NIGC was based primarily upon the product of that MICS Work Group.

In any event, the goal of fostering uniformity is not necessarily one that can or should be expected given the numerous varied Tribal-State Compacts that have been negotiated since the original 1999 Compacts. With respect to the issue of MICS in particular, the four most recently negotiated Compacts include Memoranda of Agreement ("MOA") under which those tribes have agreed to implement the NIGC MICS and to submit to enforcement and auditing by the State Gaming Agency. These concessions were arrived at through Tribal-State Compact negotiations. It is improper for the same requirements to be imposed in blanket fashion on all California gaming tribes under the auspices of a statewide gaming regulation when the MOAs stand as proof that such requirements are in the nature of Compact amendments.

D. Alternatives to CGCC-8

Since circulating its first draft of CGCC-8 in late March 2007, the CGCC has met with strong opposition from tribal gaming regulators on a number of fronts. Most, if not all, Taskforce members questioned the need for the regulation because the State had (and still has) failed to show any deficiency with the status quo. Many Taskforce members also viewed the regulation as a wholesale amendment of the 1999 Compact – and thus the proper subject of renegotiations with the State – rather than an elaboration or clarification of what the Compact already permitted. Nonetheless, in the spirit of good faith, and in response to repeated requests by the CGCC, tribal gaming regulators and tribal attorneys proposed alternatives language to the objectionable portions of CGCC-8 as well as viable alternatives to the regulation itself. The proponents of these alternatives did not purport to speak on behalf of all or even most of the other members of the Taskforce, but hoped to spur discussions that would result in a compromise approach that most of the parties could live with.

The CGCC rejected not only the alternatives to CGCC-8 but also the proposed language that would have left the CGCC's version of CGCC-8 largely intact. A brief description of the proposed alternatives follows.

1. No CGCC-8: maintain the status quo

The CGCC proposed CGCC-8 to address the supposed regulatory void created by the *CRIT* decision. Yet, despite repeated requests from Taskforce members, the CGCC failed to show – indeed, made no effort to show – that the State needed greater oversight. This is unsurprising because the existing practices of Tribal Gaming Agencies, coupled with the regulatory regime established by the existing Compacts, ensure that tribal gaming in California meets or exceeds the highest regulatory standards.

California Tribes have adopted the NIGC MICS as their own internal control standards, and submit to annual compliance and financial audits by independent licensed CPAs. These financial audits are submitted to the NIGC pursuant to federal regulations. In addition, Section 8.1.8 of the Compact requires Tribes to conduct "an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants." Moreover, the Compact at Section 7.4 gives the State the right to ensure the independent audit has been conducted by inspecting Class III tribal gaming papers and records.

Tribes in California direct significant funds to fulfilling their role as the primary regulators under the Compact. The Rose Institute of State and Local Government projects tribal gaming commission annual budgets totaling $90,282,837, an average of more than $1.5 million per Tribe. *See* Study of Gaming Regulatory Agency Expenditures of California Tribes, September 2007 at page 5. *Id.* Surveyed Tribes employ 1,833 employees in their gaming agencies, with an average size of 32 employees per regulatory agency. *Id.* Comparing the regulatory budgets of California gaming Tribes and Nevada casinos, the Rose study determined that the Tribes spend more than six times what the Nevada operations spend per machine. *Id.* at page 6 ($1560.85 vs. $241.34).

The CGCC also stated that CGCC-8 would fulfill the objective of securing the State's share of the revenue under the Compacts. (See CGCC 4/6/07 Statement of Need). However, Compacts with percentage revenue sharing provisions already include specific audit provisions negotiated to enable the state to verify accurate payments. Other Compacts provide for flat fee payments to the State rather than payments by percentages based upon net win. CGCC-8 is not necessary for this stated purpose.

2. <u>Individual Compact Amendments & MOAs</u>

From the start, the CGCC's position has been that CGCC-8 does not create any new rights or obligations, but only fleshes out what the State is entitled to under the existing Compacts. Many Tribes disagree, viewing the CGCC's claimed authority to audit class III gaming operations, and to demand the adoption of MICS that equal or exceed those promulgated by the NIGC (to name just two), as the assertion of authority beyond what the Compact allows. Indeed, the State's recent renegotiation of some 1999 Compacts to expressly provide for such authority demonstrates that the State lacks such authority in the absence of Compact amendments. (See Discussion of Legal Authority below.)[5] Accordingly, the most obvious

[5] The State also has negotiated Compact amendments as a means to further its stated interests to confirm tribal gaming integrity and protect citizens. Under these amendments, patrons have the right to independently

alternative to CGCC-8 is for the State to initiate negotiations with each Tribe on a government-to-government basis and seek the new rights and obligations it desires through the Compact's amendment process.

In addition, some tribes have entered into Memorandum of Agreements (MOAs) with the State to provide for MICS adoption and audits by the CGCC. This is another alternative to CGCC-8.

3. Legislative Fix

Another alternative is waiting for the federal government to implement its own *CRIT* fix, which it has been pursuing since shortly after the *CRIT* decision. A federal fix would address the perceived lack of oversight necessitating CGCC-8, and once in place would render any claimed State authority redundant and burdensome. Since all Tribes are continuing to enforce minimum internal control standards that meet or exceed the NIGC MICS, there is no lack of regulation that warrants immediate action by the State.

4. NIGC Oversight Pursuant to Amended Gaming Ordinances

A number of California gaming tribes have amended their gaming ordinances to expressly incorporate the NIGC MICS and to vest the NIGC with authority to enforce tribal compliance with those standards. Other Tribes have indicated their intention to do the same. (Because the *CRIT* decision did not affect the NIGC's authority with respect to financial audits, or alter the existing independent financial audit requirements in Section 8.1.8 of the Compact and 25 U.S.C. §2710(b)(2)(C), and because gaming ordinances already provide for submission of these audits to the NIGC, the amendments would not need to address such audits.) These amendments to gaming ordinances remove the regulatory gap that the State perceives to exist as a result of the *CRIT* decision and the resulting NIGC oversight renders any claimed State authority unnecessary, redundant and burdensome.

5. Agreements between Individual Tribes and the State Gaming Agency

Many Tribes also have indicated a willingness to explore entering into MOAs with the State Gaming Agency, under which an individual Tribe would reaffirm its adherence to internal controls at least as stringent as those established by the NIGC and its willingness to enforce compliance with such standards (whether through its tribal gaming agency or an independent auditor) and to provide the CGCC with certification of that compliance on an annual (or other mutually agreed upon) basis.

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arbitrate disputes over the play or operation of a game if dissatisfied with the resolution of such dispute by management and the TGA. Gaming devices are tested to ensure fairness to patrons by the TGA, independent auditors, and the CGCC, and the results of the independent audit are provided to the CGCC.

6. Alternative Language to CGCC-8 Provisions

a. Rumsey Proposal

The Rumsey Tribal Gaming Agency submitted an alternative to the CGCC's proposed CGCC-8. Under the Rumsey proposal, each tribal gaming agency would maintain a System of Internal Controls ("SICs") that would equal or exceed the agency's established MICS. The CGCC, in turn, could ensure the Tribe's compliance with the SICs by conducting compliance reviews of the Tribe's gaming operation, including its table games (if applicable). The CGCC would then provide a written DRAFT report of its findings to the Tribe, which could either accept or dispute. Disputes that could not be resolved informally or by the full CGCC would then be subject to the dispute resolution process outlined in Compact Section 9.0.

b. Attorney Work Group Proposal

Circulated by a group of attorneys for a handful of Taskforce members, the attorney work group ("AWG") draft would have accepted many of CGCC-8's provisions, including the requirement that each TGA adopt MICS standards applicable to Class III gaming equal to or more stringent than those established by the NIGC. The AWG draft also would have acceded to the CGCC's desire for greater State oversight by agreeing to provide the State Gaming Agency with copies of the financial audits and MICS Agreed-upon Procedures Reports of the Tribes' Class III gaming operations performed by independent, California-licensed CPAs, as required under IGRA. Pursuant to this draft, the CGCC would also have access to the CPA's Agreed-upon Procedures work papers, the reports and work papers of the internal audit staff, CPA observation checklists, findings by the CPA and internal audit, any exceptions and responses to those exceptions.

Pursuant to this AWG draft, if the Agreed-upon Procedures Report failed to conclude that the gaming operation was in compliance with required written internal control standards, then audited corrective action plans were mandated with CGCC input into those plans. If the plans were not complied with, then the CGCC could conduct its own compliance audit.

The AWG also proposed a more detailed dispute resolution provision than the one suggested by the CGCC, which proposed that any disputes concerning the regulation would be "referred to the full CGCC for review and decision" and then, if necessary, resolved pursuant to the Compact's dispute resolution provisions. The AWG's proposed alternative regulation maintained the State's authority to decide a dispute initially, but would have allowed a Tribe to submit an adverse ruling to binding arbitration, followed by, if necessary, an action to enforce the arbitrator's award in a court of competent jurisdiction. If a Tribe refused to comply with an arbitrator's decision, the State could invoke the Compact's dispute resolution provisions.

Finally, the AWG proposed a Sunset Provision providing that CGCC-8 would not apply to any gaming operation over which the NIGC exercises jurisdiction to monitor and enforce Class III MICS, and that the Tribe would provide to the CGCC a copy of the report issued by the NIGC.

E. Legal Authority

California does not have civil regulatory jurisdiction on Indian land absent a federal statute expressly conferring jurisdiction on the state. Public Law 280 did not confer such jurisdiction.[6] The only state civil regulatory jurisdiction that exists over a California Indian casino is through a Tribal-State Gaming Compact negotiated pursuant to IGRA. The Compact, at Section 8.2, expressly provides nothing therein affects the civil or criminal jurisdiction of the state under Public Law 280.

The CGCC cites to Compact Sections 8.4.1, 8.1.8, and 7.4 as the legal authority for CGCC-8. (*See* CGCC "Statement of Need for adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007). However, none of these Compact Sections provide legal authority for the requirements the CGCC seeks to impose on Tribes and Tribal Gaming Agencies through CGCC-8, which would require adoption of internal control standards at least as stringent as the federal MICS, submission of the financial audit to the CGCC, and submission to financial and MICS compliance reviews/audits by the CGCC.

The Compact at Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of such regulations is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state" *so that "rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency* in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent" with that regulation adopted by the state pursuant to Section 8.4.1. Further, neither the State Gaming Agency nor the Association may adopt regulations that materially alter express provisions of the Compact or render any such provisions void or a nullity.

Section 8.1 states that the Tribal Gaming Agency is vested with the authority to, and must, promulgate rules, regulations or specifications ("rules") governing a series of topics, which do *not* include a requirement to adopt or enforce the MICS. There is no Compact provision that refers to the MICS.[7] Simply put, Section 8.4.1 does not authorize a uniform state regulation on the MICS because it is not a matter encompassed by Section 6, 7, or 8 of the Compact.

Moreover, even *if* the MICS had been included in Section 8.1, there is no legal authority to include in CGCC-8 a compliance review/audit of a casino's compliance with the MICS. Section 8.1 expressly provides "the Tribal Gaming Agency shall be vested with authority" to promulgate rules governing the topics in Section 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of Tribal Gaming Agency jurisdiction over these areas. *Nothing in Section 8.1 confers jurisdiction on the state to enforce*

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[6] See Act of Aug. 15, 1953, ch. 505, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. § 1360).

[7] The fact that the MICS was not included is no accident. At the time of the Compact negotiations, the National Indian Gaming Commission had promulgated federal minimum internal control standards, required tribes to adopt tribal standards that meet or exceed those federal standards, and enforced compliance with the foregoing. Also, while some tribes took the position that NIGC lacked jurisdiction under IGRA, California tribes adopted MICS and the NIGC actively enforced the MICS. Tribes continue to enforce tribally adopted MICS. The State does not have, and has never had, regulatory authority over these tribal MICS. Therefore, any State regulatory authority in this area must come about through Tribal-State Compact negotiations.

the Tribal Gaming Agency rules pertaining to the gaming operation. Compact Section 7.1 provides that it "is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact."

The Compact could have directly required the gaming operation to comply with specified requirements on the subjects of Section 8.1.1 through 8.1.14 and could have provided state jurisdiction to enforce those requirements. Instead, the Compacts recognize the primacy of the Tribal Gaming Agency and in Section 8.1 expressly reserves to the Tribal Gaming Agency the authority over enforcement of compliance of the gaming operation with the rules it has adopted pursuant to Section 8.1.

Nor does Section 7.4 confer this jurisdiction. Under Section 7.4, the state may inspect gaming facility Class III records where reasonably necessary to ensure compliance with the Compact. Section 7.4 cannot be read to negate Section 8.1, which expressly provides for Tribal Gaming Agency's authority and jurisdiction for enforcement. Instead, Section 7.4 authorizes the state to review the rules governing the subjects of Section 8.1.1 through 8.1.10 to ensure such rules are in place and to review whether the Tribal Gaming Agency has a mechanism in place to ensure enforcement in an effective manner. Indeed, the State Gaming Agency has been conducting this type of compliance review for years through the California Department of Gambling Control (now the Bureau). The CGCC also recognized the limitations in the 1999 Compacts when it asserted in its budget change proposal for fiscal year 2006-2007 that the state has "restricted access to financial reports and information related to internal controls over gaming devices and gaming device revenues. California has limited Compact authority."[8]

In short, Section 7.4 and its subsections do not authorize the CGCC to establish minimum internal control standards for tribal gaming operations, do not authorize the CGCC to mandate that Tribal Gaming Agencies submit copies of tribal internal control standards and annual audits (financial or MICS-related) to the CGCC, and do not authorize the CGCC to conduct the comprehensive and unrestricted compliance reviews contemplated under CGCC-8, or require Tribes to engage in steps to address the CGCC's review findings.

Finally, Section 8.1.8 requires the Tribal Gaming Agency to adopt a rule requiring an independent CPA to conduct a financial audit at least annually and to ensure enforcement in an effective manner. Since these sections clearly establish the Tribal Gaming Agency as the responsible authority for regulating the annual independent financial audit of the tribal gaming operation, Section 8.1.8 does not provide legal authority for the CGCC to require submission of the financial audit report or to conduct compliance reviews/audits of the financials or of audited financial statements. In fact, the Compacts contain specific audit provisions for the State to verify revenue share, which clearly would have been unnecessary if the financial compliance review/audit proposed by CGCC-8 was authorized under the Compact.

In sum, CGCC-8 cannot confer civil regulatory jurisdiction to the state that was not conveyed by the Compact. As such, CGCC-8 is an unauthorized extension of the state's authority under the Compact. In the absence of legal authority, the provisions of CGCC-8

[8] State of California Budget Change Proposal For Fiscal Year 2006-2007 submitted to Department of Finance, at page 1-8.

amount to material amendments of the Tribal-State Compacts. As such, they must be negotiated between the State and the Tribe pursuant to section 12.1 of the Compact. Indeed, the fact that the 1999 and 2004 Compacts do *not* authorize the state to require MICS adoption, submission of financial audits, or to conduct MICS and financial compliance reviews/audits is evidenced by new compacts and new memorandum of agreements specifically including these provisions.

F. Duplicative

In his letter of March 30, 2007 to the U.S. Senate Committee on Indian Affairs ("Committee"), Governor Schwarzenegger told the Committee that "[California's] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate, NIGC's activities." CGCC-8 is entirely inconsistent with the Governor's unequivocal message to the Committee.

CGCC-8 is needlessly duplicative in several respects. As stated above, the *CRIT* decision did not alter the existing federal requirements for annual external financial audits found at 25 U.S.C. § 2710(b)(2)(C) or affect in any way the NIGC's regulatory authority over the conduct and results of such audits. Section 8.1.8 of the 1999 Compact (and comparable sections of the new or amended Compacts) place the responsibility for conducting the annual outside audit on the Tribal Gaming Agency[9], an approach consistent with the federal requirement. Thus, the financial audit requirements contemplated by CGCC-8 are already in place, with NIGC oversight, and would be entirely duplicative of existing tribal and federal activities.

Additionally, the initial "Statement of Need" for CGCC-8 stated that the proposed regulation would "guarantee that [the State's] interest in the revenue sharing that is a part of each compact is secure." However, all Compacts with percentage revenue sharing provisions already include specific audit provisions negotiated to enable the state to verify that such tribal payments are accurate. (See, for example, sections 5.3(c) and (d) of the 1999 Compacts.) Thus, these provisions of CGCC-8 needlessly duplicate existing Compact requirements.

With respect to its MICS-related provisions, CGCC-8 is duplicative in that tribes already have in place standards at least as stringent as the NIGC MICS, and these standards are enforced by Tribal Gaming Agencies. In addition, in recent weeks a number of California gaming tribes have amended their Tribal Gaming Ordinances[10] to expressly incorporate the NIGC MICS. By so doing, those tribes have granted the NIGC authority to monitor and enforce tribal compliance with those standards, up to and including the authority to close non-conforming facilities, under 25 U.S.C. § 2713 and 25 CFR pt. 542.3(g). The first of these ordinance amendments were approved by the Chairman of the NIGC, and went into effect, in January, 2008. A number of

[9] Section 2.20 of the 1999 Compacts, and similar sections of the new or amended compacts, define "Tribal Gaming Agency" as the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal Gaming Ordinance.

[10] Section 2.10 of the 1999 Compacts, and similar sections of the new or amended compacts, define "Gaming Ordinance" as a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the Tribe's Indian lands and approved under IGRA.

additional tribes have announced their intention to similarly amend their Gaming Ordinances in the near future.

With respect to these tribes in particular, and with respect to all tribes if and when Congress adopts "CRIT-fix" legislation, the MICS-related provisions of CGCC-8 needlessly duplicate tribal and federal regulatory activities with no offsetting benefit.

III. Recommendation

For the foregoing reasons, the Association Regulatory Standards Taskforce recommends that the Association find that draft CGCC-8, as presented to the Taskforce for consideration, is unnecessary, unduly burdensome, and unfairly discriminatory. Accordingly, CGCC-8, as drafted, should not be adopted as a proposed regulation for presentation to the Association. Furthermore, if the draft proposed regulation is adopted and presented to the Association, the Taskforce recommends that the Association disapprove CGCC-8.

TRIBAL ALLIANCE OF SOVEREIGN INDIAN NATIONS

A Study of Gaming Regulatory Agency Expenditures of Tribes in California

Prepared by
The Rose Institute of State and Local Government
At Claremont McKenna College
For
The Tribal Alliance of Sovereign Indian Nations

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A Study of Gaming Regulatory Agency Expenditures of Tribes in California

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September 10, 2007

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The following report will provide an overview of the current regulatory status and expenditures of tribes operating casinos surveyed from members of the State of California Tribal Regulator Networking Group. This overview includes the budget numbers and the number of employees within the gaming regulatory agencies that regulate the gaming operations of the tribes in the study. We will first elaborate on the provisions of the compacts and pertinent state law to demonstrate the nature of the relationship between the sovereign tribal governments and the state and federal governments. We will then look at the tribal budgets that are allotted for the tribal gaming regulatory agencies.

The California Compacts and Pertinent State and Federal Law

As affirmed by the United States District Court of the District of Columbia in *Colorado River Indian Tribes v. National Indian Gaming Commission*, 383 F. Supp. 2d 123; 2005 U.S. Dist. LEXIS 17722, the California Compacts (and the compacts in any state) are the necessary tool to authorize Class III gaming on tribal lands and allow the state, through good-faith negotiations, to accommodate their interests in the regulation of the said gaming. Under the provisions of the Indian Gaming Regulatory Act, a federal statute passed in 1987, Class III gaming is lawful on Indian lands only if:

- The tribe has authorized such gaming by an ordinance approved by the Chairperson of the National Indian Gaming Commission (NIGC);
- The laws of the state in which gaming is to be conducted permit such gaming by any person or entity for any purpose;
- The gaming has been authorized by a tribal-state compact that has been signed by the state and the tribe, approved by the Secretary of State, and approved by the Secretary of the Interior.

Congress concluded that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity" (*Id.* at § 2701[5]). IGRA establishes three gaming classifications. *Class I* gaming consists of traditional games and is regulated exclusively by Indian tribes. *Class II* gaming includes games such as "bingo" and "pull-tabs," and *Class III* gaming includes all other forms of gaming, including casino games such as blackjack, craps and roulette, and slot machines.

In order to engage in Class III gaming, a tribe must adopt a tribal gaming ordinance that meets certain federal standards and is approved by the Chairman of the NIGC (*See* 25 U.S.C. § 2710 [2002]). Despite the decision in *Colorado River Indian Tribes v. National Indian Gaming Commission,* the NIGC continues to have substantial responsibilities over Class III gaming, including the authority to issue fines or closure orders for violation of IGRA or NIGC regulations, NIGC-approved gaming ordinances, and tribal-state compacts.

The state has a legitimate interest in the effective regulation of gaming; however, the state is banned from using the compacting process to attempt to increase its jurisdiction in Indian Country. Congress specifically blocks states from using the compacting process to extend their jurisdiction into areas not reasonably necessary for the effective regulation of Class III gaming. The compacts are not contracts between the state and private entities. Tribal-State Class III gaming compacts are agreements between the state and separate sovereign tribal governments. The compacts have the force of state, tribal, and federal law because the legislature, the tribe, and the Secretary of Interior all agree to the provisions of the compact.

On September 10, 1999, fifty-seven federally recognized tribes entered into compacts with the State of California. Each compact is a separate, independent agreement between a single tribe and the state. In March 2000, the voters of California passed Proposition 1A by an overwhelming margin, and that law now appears in the California Constitution as Article 4 Section 19(f). The Secretary of the Interior then approved the compacts as required under IGRA, and it went into effect in May 2000. That compact provides, in relevant part, as follows:

> (a) Each tribe must create a gaming regulatory agency, known in the compact as a Tribal Gaming Agency (TGA), to carry out the tribe's regulatory responsibilities (*See* Compact §§ 2.20, 6, 7).
>
> (b) The State has formed two State Gaming Agencies, including the California Gambling Control Commission and, within the California Department of Justice, the Division of Gambling Control under the Gambling Control Act (*See* Compact §§ 2.2 and 2.18).
>
> (c) The Compact requires a cooperative approach to the regulation of each Tribe's governmental gaming operation, with primary regulatory jurisdiction and responsibility vested in each Tribe.

The Compact created a negotiated regulatory framework in which each Tribal government exercises primary and significant regulatory jurisdictional rights and duties, and the State (including the Commission and Division) fulfills specifically defined oversight and other functions. Where the Compact does not expressly designate a role for the State with respect to implementing a particular procedure, regulation of that activity remains within the exclusive jurisdiction of the Tribal government, subject to IGRA.

An intergovernmental "Association" was established in the Compact for the purpose of developing regulations. The Association included a selection of California tribal and state gaming regulators, the membership of which comprises up to two representatives from each TGA of those tribes with whom the State has a gaming compact under IGRA, and up to two delegates each from the Division of Gambling Control and the California Gambling Control Commission (Compact § 2.2).

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The Association has adopted a protocol for the manner in which it will conduct its approval of proposed regulations.

The tribal compacts that then-Gov. Gray Davis signed in 1999 show that while the California Gambling Control Commission has a role in gaming oversight, the tribal gaming regulatory agencies are primarily responsible for the day-to-day regulation of gaming operations. Section 7.1 of the Tribal-State Compact says,

> Sec. 7.1. On-Site Regulation. It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Section 7.4 of the same compact elaborates on the role that the State Gaming Agency should play in relation to the individual tribal gaming regulatory agencies. It says,

> [T]he Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, [and] the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto[.]

According to the language of the compacts, the tribes, rather than the California Gambling Control Commission, should be the primary arbiter and enforcer of gaming related issues and regulations.

Section 8.1.8 of the compact requires tribes to conduct "an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants."

The California Gambling Control Act provides guidelines for the California Gambling Control Commission. Sections 19810 and 19811 establish that the California Gambling Control Commission consists of five members that the governor appoints and the Senate confirms. Subsection B of Section 19811 says,

> (b) Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments is vested in the commission.

Further sections of the California Gambling Control Act elaborate on the major aspects of gaming that the Commission should oversee, such as licensing and periodic checks on compliance of the rules specified under the compacts and the Gambling Control Act (specifically in sections 19823 and 19824). In summary, the California Gambling Control Commission's major duties under the compacts and the Gambling Control Act include licensing requirements and compliance and monitoring functions, but the tribal gaming regulatory agencies have the primary responsibility for gaming regulation. Therefore, it is important to study how the tribes are carrying out this responsibility.

The Budget of the Tribes' Gaming Regulatory Agencies: An Overview[1]

The 64 tribes that are covered in the following report have projected gaming commission annual budgets totaling $90,282,837. The tribes have a projected average annual gaming regulatory budget of $1,556,600. The regulatory budgets range from $12,000 to $4,600,000. The gaming regulatory agencies of the surveyed tribes employ approximately 1,833 employees total; the average size of each individual tribe's gaming regulatory agency is 32 employees—4 of whom, on average, have previous law enforcement experience.

	Surveyed	Projected	Average
Commission Annual Budget	$54,644,809	$90,282,837	$1,556,600
Number of Gaming Regulatory Agency Employees	1,276	1,833	32
Number of Employees With Law Enforcement Experience	107	225	4
Number of Machines	47,812	64,543	1,113
Commission Annual Budget Per Machine	$1,143	$1,399	---

The tribes represented in this report operate 64,543[2] machines in their casinos. Each tribal regulatory commission has a projected annual budget of $1,399 per machine.

The State of California and the California Gambling Control Commission have a legitimate interest in regulating gaming activity. As IGRA and the compacts point out, however, the tribal gaming regulatory agencies have the primary role in gaming regulation.

Our study shows that the tribes in California directed significant funds and energy toward this end. Moreover, it should be noted that all tribes that currently operate tribal casinos and responded to the survey reported that they did *not* eliminate their Minimum

[1] All projections are derived from the data provided by the State of California Tribal Regulator Networking Group (who conducted a survey of its membership, 46 of whom responded) to the Rose Institute of State and Local Government. The reported results are estimated using bivariate and multivariate regression models. Of the 64 tribes covered in this report, only 57 currently operate a tribal casino, with 1 opening a casino in the first half of 2008. Thus, only these 58 are taken into account in making the projections and averages. Furthermore, projected values are used when calculating averages.

[2] This figure is not a projection; rather, it is the actual number of machines operated by the 58 tribes taken into account in this study. The number was calculated by adding the number of machines listed for each tribal casino in the *Casino City's North American Gaming Almanac 2006-2007 Edition.*

Internal Control Standards (MICS) as a result of the *Colorado River Indian Tribes* decision.

Gaming Regulatory Resources: A Comparative Perspective

To provide further context in which to consider the scale of regulatory activities and resources in California, the most natural comparison is to the neighboring state of Nevada, where most forms of gaming have been legal since 1931.

	California	**Nevada**
Total Number of Machines	*64,543*[3]	*172,318*[4]
Number of Tribal Gaming Regulatory Agency Employees (Projected)	1,833	---
Number of State Gaming Regulatory Agency Employees (FTE)	63[5]	461[6]*
Total Gaming Regulatory Agency Employees	*1,896*	*461*
Tribal Gaming Commission Annual Budget (Projected)	$90,282,837	---
State Gambling Control Commission Annual Budget	$10,459,000[7]	$41,586,720[8]
Total Regulatory Budget	*$100,741,837*	*$41,586,720**
Number of Statewide Regulatory Employees per Machine	**0.0293758**	**0.0026579**
Statewide Regulatory Budget per Machine	**$1560.85**	**$241.34**

[3] *Casino City's North American Gaming Almanac 2006-2007 Edition.*
[4] *Casino City's Nevada Gaming Almanac 2006 Edition.*
[5] *California Gambling Control Budget*, available at: http://www.ebudget.ca.gov/pdf/GovernorsBudget/0010/0855.pdf
[6] *Nevada Gaming Control Board Budget*, available at: http://budget.state.nv.us/budget_2007_09/budget_book/2007-2009%20Executive%20Budget_GAMING%20CONTROL%20BOARD.pdf (Governor recommended number for 2007-2008.)
[7] *California Gambling Control Budget.*
[8] *Nevada Gaming Control Board Budget.* (Governor recommended number for 2007-2008.)

* Nevada casinos may have some compliance personnel that perform functions similar to those performed by tribal government operations. As these are not government expenditures (and not readily available) they are not included herein.